

APPENDIX OF KEY JCIG FILINGS

Tab 1

LAWLER, METZGER & MILKMAN, LLC

1909 K STREET, NW
SUITE 820
WASHINGTON, D.C. 20006

A. RICHARD METZGER, JR..
PHONE (202) 777-7729

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

January 22, 2002

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Ms. Salas:

On January 22, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to adopt performance measures, performance standards, and reporting requirements governing the provision of interstate special access services by Tier 1/Class A incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A. Richard Metzger, Jr.

Attachments

cc: Chairman Powell (w/o attachments)

January 22, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Joint Competitive Industry Group Proposal Regarding Performance
Metrics and Installation Intervals for Interstate Special Access Services

Dear Chairman Powell:

The undersigned competitive telecommunications carriers, trade associations and the eCommerce & Telecommunications Users Group (eTUG) (the "Joint Competitive Industry Group") urge the Commission to adopt performance measures, performance standards, and reporting requirements to govern the provision of special access services by incumbent local exchange carriers (LECs). Since release of the Commission's Notice of Proposed Rulemaking in this proceeding, the Joint Competitive Industry Group has devoted considerable time and effort to the development of a coherent, practical, and enforceable set of such measures, standards and reporting requirements. The results of that effort are reflected in the attached Performance Measurements & Standards applicable to the provision of all interstate special access services by Tier 1/Class A incumbent LECs (Attachment A), as well as the attached proposal regarding Offered Installation Intervals (Attachment B).

The Joint Competitive Industry Group believes that its proposal accomplishes the following objectives:

- (1) A united competitive industry and user group view regarding the best way to achieve the quality of special access provisioning required to serve business customers;
- (2) A concise set of metrics that will induce proper provisioning and deter discrimination by incumbent LECs;
- (3) A set of metrics that can easily be incorporated into a remedy plan.

Chairman Powell
January 22, 2002
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The Joint Competitive Industry Group therefore urges the Commission to adopt the Group's proposal regarding performance metrics and installation intervals.

Sincerely,

The Joint Competitive Industry Group

Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Rebecca H. Sommi
Vice President Operations Support
Broadview Networks

Cathy Slesinger
Senior Vice President, Public Policy
Cable & Wireless

David A. Fitts
Director-Regulatory Affairs
Choice One Communications Inc.

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

Paul Kouroupas
Senior Counsel, Worldwide Regulatory
and Industry Affairs
Global Crossing, Ltd.

Dan M. Lipschultz
Associate General Counsel
McLeodUSA Corporation

Lisa Komer Butler
Vice President – Regulatory & Industry
Relations
Network Plus

Jake E. Jennings
Vice President – Regulatory Affairs
NewSouth Communications

JT Ambrosi
Vice President, Carrier and Government
Relations
PaeTec Communications, Inc.

Kelsi Reeves
Vice President – Federal Government
Relations
Time Warner Telecom

Donna Sorgi
Vice President, Federal Advocacy
Law and Public Policy
WorldCom, Inc.

R. Gerard Salemm
Senior Vice President, External Affairs
XO Communications, Inc

John Windhausen, Jr.
President
**Association for Local Telecommunications
Services**

H. Russell Frisby, Jr.
President
**Competitive Telecommunications
Association**

Brian Moir
General Counsel
**eCommerce & Telecommunications Users
Group**

Chairman Powell
January 22, 2002
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Attachments

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
Uzoma Onyeije
Magalie Roman Salas

ATTACHMENT A

**Joint Competitive Industry Group
Proposal**

**ILEC PERFORMANCE
MEASUREMENTS & STANDARDS**

in the
**Ordering, Provisioning,
and
Maintenance & Repair
of**

SPECIAL ACCESS SERVICE

Version 1.1

Issued: January 18, 2002

ILEC Performance Measurements and Standards

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ILEC Performance Measurements and Standards

Reporting Dimensions

CLEC or IXC Carrier specific total, with the following reporting dimensions for all measurements.

- Special Access disaggregated by bandwidth
Sub Totaled by State
Totaled by ILEC

Comparison reports are required for:

- CLEC/ IXC Carrier Aggregate
- ILEC Affiliates Aggregate

Special Access is any exchange access service that provides a transmission path between two or more points, either directly, or through a central office, where bridging or multiplexing functions are performed, not utilizing ILEC end office switches.

Special access services include dedicated and shared facilities configured to support analog/voice grade service, metallic and/or telegraph service, audio, video, digital data service (DDS), digital transport and high capacity service (DS1, DS3 and OCn), collocation transport, links for SS7 signaling and database queries, SONET access including OC-192 based dedicated SONET ring access, and broadband services.

Exclusions: Transmission path requests pursuant to an Interconnection Agreement for Unbundled Network Elements are excluded from these Performance Measures.

Reporting Period: The reporting period is the calendar month, unless otherwise noted, with all averages or percentages displayed to one decimal point.

ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-1 FOC Receipt

Description

The Firm Order Confirmation (FOC) is the ILEC response to an Access Service Request (ASR), whether an initial or supplement ASR, that provides the CLEC or IXC Carrier with the specific Due Date on which the requested circuit or circuits will be installed. The expectation is that the ILEC will conduct a minimum of an electronic facilities check to ensure due dates delivered in FOCs can be relied upon. The performance standard for FOCs received within the standard interval is expressed as a percentage of the total FOCs received during the reporting period. A diagnostic distribution is required along with a count of ASRs withdrawn at the ILEC's request due to a lack of ILEC facilities or otherwise.

Calculation Methodology

Percent Meeting Performance Standard:

$$\frac{[\text{Count FOCs received where (FOC Receipt Date - ASR Sent Date)} \leq \text{Performance Standard}]}{\text{Total FOCs received during reporting period}} \times 100$$

FOC Receipt - Distribution:

(FOC Receipt Date - ASR Sent Date), for each FOC received during reporting period, distributed by:
0 day, 1 day, 2 days, through 10 days and > 10 days

ASRs Withdrawn at ILEC Request due to a lack of ILEC Facilities or Otherwise

Count of ASRs, which have not yet received a FOC, Withdrawn at ILEC Request, during the current reporting period, due to a lack of ILEC facilities or otherwise

Business Rules

1. Counts are based on each instance of a FOC received from the ILEC. If one or more Supplement ASRs are issued to correct or change a request, each corresponding FOC, which is received during the reporting period, is counted and measured.
2. Days shown are business days, Monday to Friday, excluding National Holidays. Activity starting on a weekend, or holiday, will reflect a start date of the next business day, and activity ending on a weekend, or holiday, will be calculated with an end date of the last previous business day.
3. Projects are included. Determination of what is identified as a project varies by ILEC and should not alter the need to ensure that service is provided within expected intervals.

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Cancelled ASRs
- Record ASRs

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent FOCs Received within Standard

- DS0 => 98.0% within 2 business days
- DS1 => 98.0% within 2 business days
- DS3 => 98.0% within 5 business days
- OCn - ICB (Individual Case Basis)

FOC Receipt Distribution

- Diagnostic

ASRs Withdrawn at ILEC Request Due to a Lack of ILEC Facilities or Otherwise - Diagnostic

ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-2 FOC Receipt Past Due

Description

The FOC Receipt Past Due measure tracks all ASR requests that have not received an FOC from the ILEC within the expected FOC receipt interval, as of the last day of the reporting period and do not have an open, or outstanding, Query/Reject. This measure gauges the magnitude of late FOCs and is essential to ensure that FOCs are being received in a timely manner from the ILECs. A distribution of these late FOCs, along with a report of those late FOCs that do have an open Query/Reject, is required for diagnostic purposes.

Calculation Methodology

Percent FOC Receipt Past Due - Without Open Query/Reject:

Sum of ASRs without a FOC Received, and a Query/Reject is not open, where (End of Reporting Period – ASR Sent Date > Expected FOC Receipt Interval) / Total number of ASRs sent during reporting period x 100

FOC Receipt Past Due - Without Open Query/Reject - Distribution:

[(End of Reporting Period – ASR Sent date) – (Expected FOC Receipt Interval)] for ASRs without a FOC received and a Query/Reject is not open with the CLEC or IXC Carrier, distributed by;
1-5 Days, 6-10 Days, 11-20 Days, 21- 30 Days, 31-40 Days, and > 40 Days

Percent FOC Receipt Past Due - With Open Query/Reject:

Sum of ASRs without a FOC Received, and a Query/Reject is open, where (End of Reporting Period – ASR Sent Date > Expected FOC Receipt Interval) / Total number of ASRs sent during reporting period x 100

Business Rules

1. All counts are based on the latest ASR request sent to the ILEC. Where one or more subsequent ASRs have been sent, only the latest ASR would be recorded as Past Due if no FOC had yet been returned.
2. The Expected FOC Receipt Interval, used in the calculations, will be the interval identified in the Performance Standards for the FOC Receipt measure.
3. Days shown are business days, Monday to Friday, excluding National Holidays. Activity starting on a weekend, or holiday, will reflect a start date of the next business day, and activity ending on a weekend, or holiday, will be calculated with an end date of the last previous business day.
4. Projects are included. Determination of what is identified as a project varies by ILEC and should not alter the need to ensure that service is provided within expected intervals.

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Cancelled ASRs
- Record ASRs

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent FOC Receipt Past Due - Without Open Query/Reject	< 2.0 % FOC Receipt Past Due
FOC Receipt Past Due – Without Open Query/Reject - Distribution	- Diagnostic
Percent FOC Receipt Past Due - With Open Query/Reject	- Diagnostic

ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-3 Offered Versus Requested Due Date

Description

The Offered Versus Requested Due Date measure reflects the degree to which the ILEC is committing to install service on the CLEC or IXC Carrier Requested Due Date (CRDD), when a Due Date Request is equal to or greater than the ILEC stated interval. A distribution of the delta, the difference between the CRDD and the Offered Date, for these FOCs is required for diagnostic purposes.

Calculation Methodology

Percent Offered with CLEC or IXC Carrier Requested Due Date:

$$\frac{[\text{Count of ASRs where (FOC Due Date = CRDD)}]}{[\text{Total number of ASRs where (CRDD - ASR Sent Date) = } \geq \text{ILEC Stated Interval}]} \times 100$$

Offered versus Requested Interval Delta – Distribution:

$$[(\text{Offered Due Date} - \text{CRDD}) \text{ where } (\text{CRDD} - \text{ASR Sent Date}) = \geq \text{ILEC Stated Interval}] \text{ for each FOC received during the reporting period, distributed by; } 0 \text{ Days, } 1\text{-}5 \text{ Days, } 6\text{-}10 \text{ Days, } 11\text{-}20 \text{ Days, } 21\text{-}30 \text{ Days, } 31\text{-}40 \text{ Days, and } > 40 \text{ Days}$$

Business Rules

1. Counts are based on each instance of a FOC received from the ILEC. If one or more Supplement ASRs are issued to correct or change a request, each corresponding FOC, which is received during the reporting period, is counted and measured.
2. Days shown are business days, Monday to Friday, excluding National Holidays. Activity starting on a weekend, or holiday, will reflect a start date of the next business day, and activity ending on a weekend, or holiday, will be calculated with an end date of the last previous business day.
3. Projects are included. Determination of what is identified as a project varies by ILEC and should not alter the need to ensure that service is provided within expected intervals.

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Cancelled ASRs
- Record ASRs

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent Offered with CRDD (where CRDD = \geq ILEC Stated Interval) = 100%

Offered versus Requested Interval Delta – Distribution - Diagnostic

ILEC Stated Intervals: To be determined by ILEC

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-4 On Time Performance To FOC Due Date

Description

On Time Performance To FOC Due Date measures the percentage of circuits that are completed on the FOC Due Date, as recorded from the FOC received in response to the last ASR sent. Customer Not Ready (CNR) situations may result in an installation delay. The On Time Performance To FOC Due Date is calculated both with CNR consideration, i.e. measuring the percentage of time the service is installed on the FOC due date while counting CNR coded orders as an appointment met, and without CNR consideration.

Calculation Methodology

Percent On Time Performance to FOC Due Date – With CNR Consideration:

$$\frac{[(\text{Count of Circuits Completed on or before ILEC Committed Due Date} + \text{Count of Circuits Completed after FOC Due Date with a verifiable CNR code}) / (\text{Count of Circuits Completed in Reporting Period})] \times 100}{1}$$

Percent On Time Performance to FOC Due Date – Without CNR Consideration:

$$\frac{[(\text{Count of Circuits Completed on or before ILEC Committed Due Date}) / (\text{Count of Circuits Completed in Reporting Period})] \times 100}{1}$$

Note: The denominator for both calculations is the total count of circuits completed during the reporting period, including all circuits, with and without a CNR code.

Business Rules

1. Measures are based on the last ASR sent and the associated FOC Due Date received from the ILEC.
2. Selection is based on circuits completed by the ILEC during the reporting period. An ASR may provision more than one circuit and ILECs may break the ASR into separate internal orders, however, the ASR is not considered completed for measurement purposes until all circuits are completed.
3. The ILEC Completion Date is the date upon which the ILEC completes installation of the circuit, as noted on a completion advice to the CLEC or IXC Carrier.
4. Projects are included. Determination of what is identified as a project varies by ILEC and should not alter the need to ensure that service is provided on the FOC Due Date.
5. A Customer Not Ready (CNR) is defined as a verifiable situation beyond the normal control of the ILEC that prevents the ILEC from completing an order, including the following: CLEC or IXC Carrier is not ready; end user is not ready; connecting company, or CPE (Customer Premises Equipment) supplier, is not ready. The ILEC must ensure that established procedures are followed to notify the CLEC or IXC Carrier of a CNR situation and allow a reasonable period of time for the CLEC or IXC Carrier to correct the situation.

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Cancelled ASRs
- Record ASRs

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent On Time to FOC Due Date - With CNR Consideration = > 98.0 % On Time
Percent On Time to FOC Due Date - Without CNR Consideration - Diagnostic

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-5 Days Late

Description

Days Late captures the magnitude of the delay, both in average and distribution, for those circuits not completed on the FOC Due Date, and the delay was not a result of a verifiable CNR situation. A breakdown of delay days caused by a lack of ILEC facilities is required for diagnostic purposes.

Calculation Methodology

Average Days Late:

$$\frac{\Sigma[\text{Circuit Completion Date} - \text{ILEC Committed Due Date (for all Circuits Completed Beyond ILEC Committed Due Date without a CNR code)}]}{(\text{Count of Circuits Completed Beyond ILEC Committed Due Date without a CNR code})}$$

Days Late Distribution:

Circuit Completion Date – ILEC Committed Due Date (for all Circuits Completed Beyond ILEC Committed Due Date without a CNR code) distributed by: 1 day, 2-5 Days, 6-10 Days, 11-20 Days, 21- 30 Days, 31-40 Days, and > 40 Days

Average Days Late Due to a Lack of ILEC Facilities:

$$\frac{\Sigma[\text{Circuit Completion Date} - \text{ILEC Committed Due Date (for all Circuits Completed Beyond ILEC Committed Due Date without a CNR code and due to a Lack of ILEC Facilities)}]}{(\text{Count of Circuits Completed Beyond ILEC Committed Due Date without a CNR code and due to a Lack of ILEC Facilities})}$$

Business Rules

1. Measures are based on the last ASR sent and the associated FOC Due Date received from the ILEC.
2. Selection is based on circuits completed by the ILEC during the reporting period. An ASR may provision more than one circuit and ILECs may break the ASR into separate internal orders, however, the ASR is not considered completed for measurement purposes until all circuits are completed.
3. Days shown are business days, Monday to Friday, excluding National Holidays. Activity starting on a weekend, or holiday, will reflect a start date of the next business day, and activity ending on a weekend, or holiday, will be calculated with an end date of the last previous business day.
4. Projects are included. Determination of what is identified as a project varies by ILEC and should not alter the need to ensure that service is provided on the FOC Due Date.
5. A Customer Not Ready (CNR) is defined as a verifiable situation beyond the normal control of the ILEC that prevents the ILEC from completing an order, including the following: CLEC or IXC Carrier is not ready; end user is not ready; connecting company, or CPE (Customer Premises Equipment) supplier, is not ready. The ILEC must ensure that established procedures are followed to notify the CLEC or IXC Carrier of a CNR situation and allow a reasonable period of time for the CLEC or IXC Carrier to correct the situation

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Cancelled ASRs
- Record ASRs

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Average Days Late	< 3.0 Days
Days Late Distribution	- Diagnostic
Average Days Late Due to a Lack of ILEC Facilities	- Diagnostic

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-6 Average Intervals - Requested/Offered/Installation

Description

The intent of this measure is to capture three important aspects of the provisioning process and display them in relation to each other. The Average CLEC or IXC Carrier Requested Interval, the Average ILEC Offered Interval, and the Average Installation Interval, provide a comprehensive view of provisioning, with the ultimate goal of having these three intervals equivalent.

Calculation Methodology

Average CLEC or IXC Carrier Requested Interval:

$\text{Sum (CRDD - ASR Sent Date)} / \text{Total Circuits Completed during reporting period}$

Average ILEC Offered Interval:

$\text{Sum (FOC Due Date - ASR Sent Date)} / \text{Total Circuits Completed during reporting period}$

Average Installation Interval:

$\text{Sum (ILEC Completion Date - ASR Sent Date)} / \text{Total Circuits Completed during reporting period}$

Business Rules

1. Measures are based on the last ASR sent and the associated FOC Due Date received from the ILEC.
2. Selection is based on circuits completed by the ILEC during the reporting period. An ASR may provision more than one circuit and ILECs may break the ASR into separate internal orders, however, the ASR is not considered completed for measurement purposes until all circuits are completed.
3. Days shown are business days, Monday to Friday, excluding National Holidays. Activity starting on a weekend, or holiday, will reflect a start date of the next business day, and activity ending on a weekend, or holiday, will be calculated with an end date of the last previous business day.
4. Projects are included. Determination of what is identified as a project varies by ILEC and should not alter the need to ensure that service is provided within expected intervals.
5. The Average Installation Interval includes all completions.

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Cancelled ASRs
- Record ASRs

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Average Requested Interval - Diagnostic
Average Offered Interval - Diagnostic
Average Installation Interval - Diagnostic

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-7 Past Due Circuits

Description

The Past Due Circuits measure provides a snapshot view of circuits not completed as of the end of the reporting period. The count is taken from those circuits that have received an FOC Due Date but the date has passed. Results are separated into those held for ILEC reasons and those held for CLEC or IXC Carrier reasons (CNRs), with a breakdown, for diagnostic purposes, of Past Due Circuits due to a lack of ILEC facilities. A diagnostic measure, Percent Cancellations After FOC Due Date, is included to show a percent of all cancellations processed during the reporting period where the cancellation took place after the FOC Due Date had passed

Calculation Methodology

Percent Past Due Circuits:

$$\frac{[(\text{Count of all circuits not completed at the end of the reporting period} > 5 \text{ days beyond the FOC Due Date, grouped separately for Total ILEC Reasons, Lack of ILEC Facility Reasons, and Total CLEC/Carrier Reasons}) / (\text{Total uncompleted circuits past FOC Due Date, for all missed reasons, at the end of the reporting period})] \times 100}{}$$

Past Due Circuits Distribution:

Count of all circuits past the FOC Due Date that have not been reported as completed (Calculated as last day of reporting period - FOC Due Date) Distributed by: 1-5 days, 6-10 days, 11-20 days, 21-30 days, 31-40 Days, > 40 days

Percent Cancellations After FOC Due Date:

$$\frac{[\text{Count (All circuits cancelled during reporting period, that were Past Due at the end of the previous reporting period, where (Date Cancelled} > \text{FOC Due Date}) / (\text{Total circuits Past Due at the end of the previous reporting period})] \times 100}{}$$

Business Rules

1. Calculation of Past Due Circuits is based on the most recent ASR and associated FOC Due Date.
2. An ASR may provision more than one circuit and ILECs may break the ASR into separate internal orders, however, the ASR is not considered completed for measurement purposes until all segments are completed.
3. Days shown are business days, Monday to Friday, excluding National Holidays. Activity starting on a weekend, or holiday, will reflect a start date of the next business day, and activity ending on a weekend, or holiday, will be calculated with an end date of the last previous business day.
4. Projects are included. Determination of what is or is not identified as a project varies by ILEC and should not alter the need to ensure that service is provided on the FOC Due Date.
5. A Customer Not Ready (CNR) is defined as a verifiable situation beyond the normal control of the ILEC that prevents the ILEC from completing an order, including the following: CLEC or IXC Carrier is not ready; end user is not ready; connecting company, or CPE (Customer Premises Equipment) supplier, is not ready. The ILEC must ensure that established procedures are followed to notify the CLEC or IXC Carrier of a CNR situation and allow a reasonable period of time for the CLEC or IXC Carrier to correct the situation

Exclusions

- Unsolicited FOCs
- Disconnect ASRs
- Record ASRs

Levels of Disaggregation

- DSO / DS1 / DS3 / OCn

Performance Standard

Percent Past Due Circuits - Total ILEC Reasons	< 3.0 % > 5 days beyond FOC Due Date
Percent Past Due Circuits - Due to Lack of ILEC Facilities	- Diagnostic
Percent Past Due Circuits - Total CLEC Reasons	- Diagnostic
Past Due Circuits Distribution	- Diagnostic
Percent Cancellation After FOC Due Date	- Diagnostic

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-8 New Installation Trouble Report Rate

Description

New Installation Trouble Report Rate measures the quality of the installation work by capturing the rate of trouble reports on new circuits within 30 calendar days of the installation.

Calculation Methodology

Trouble Report Rate Within 30 Calendar Days of Installation:

$$\frac{[\text{Count (trouble reports within 30 Calendar Days of Installation)}]}{(\text{Total Number of Circuits Installed in the Report Period})} \times 100$$

Business Rules

1. The ILEC Completion Date is the date upon which the ILEC completes installation of the circuit, as noted on a completion advice to the CLEC or IXC Carrier.
2. The calculation for the preceding 30 calendar days is based on the creation date of the trouble ticket.

Exclusions

- Trouble tickets that are canceled at the CLEC's or IXC Carrier's request
- CLEC, IXC Carrier, CPE (Customer Premises Equipment), or other customer caused troubles
- ILEC trouble reports associated with administrative service
- Tickets used to track referrals of misdirected calls
- CLEC or IXC Carrier requests for informational tickets

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

New Installation Trouble Report Rate ≤ 1.0 trouble reports per 100 circuits installed

ILEC Performance Measurements and Standards

MAINTENANCE & REPAIR

Measurement: JIP-SA-9 Failure Rate

Description

Failure Rate measures the overall quality of the circuits being provided by the ILEC and is calculated by dividing the number of troubles resolved during the reporting period by the total number of "in service" circuits, at the end of the reporting period, and is then annualized by multiplying by 12 months.

Calculation Methodology

Failure Rate – Annualized:

$$\{[(\text{Count of Trouble Reports resolved during the Reporting Period}) / (\text{Number of Circuits In Service at the end of the Report Period})] \times 100\} \times 12$$

Business Rules

1. A trouble report/ticket is any record (whether paper or electronic) used by the ILEC for the purposes of tracking related action and disposition of a service repair or maintenance situation.
2. A trouble is resolved when the ILEC issues notice to the CLEC or IXC Carrier that the circuit has been restored to normal operating parameters.
3. Where more than one trouble is resolved on a specific circuit during the reporting period, each trouble is counted in the Trouble Report Rate.

Exclusions:

- Trouble tickets that are canceled at the CLEC's or IXC Carrier's request
- CLEC, IXC Carrier, CPE (Customer Premises Equipment), or other customer caused troubles
- ILEC trouble reports associated with administrative service
- CLEC or IXC Carrier requests for informational tickets
- Tickets used to track referrals of misdirected calls

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standard

Failure Rate Annualized	- Below DS3	<= 10.0%
	- DS3 and Above	<= 10.0%

ILEC Performance Measurements and Standards

MAINTENANCE & REPAIR

Measurement: JIP-SA-10 Mean Time to Restore

Description

The Mean Time To Restore interval measures the promptness in restoring circuits to normal operating levels when a problem or trouble is referred to the ILEC. Calculation is the elapsed time from the CLEC or IXC Carrier submission of a trouble report to the ILEC to the time the ILEC closes the trouble, less any Customer Hold Time or Delayed Maintenance Time due to valid customer, CLEC, or IXC Carrier caused delays. A breakdown of the percent of troubles outstanding greater than 24 hours, and the Mean Time to Restore of those troubles recorded as Found OK / Test OK, is required for diagnostic purposes.

Calculation Methodology

Mean Time To Restore:

$$\Sigma [(Date and Time of Trouble Ticket Resolution Closed to the CLEC or IXC Carrier - Date and Time of Trouble Ticket Referred to the ILEC) - (Customer Hold Times)] / (Count of Trouble Tickets Resolved in Reporting Period)]$$

% Out of Service Greater than 24 hrs:

$$[Count of Troubles where (Date and Time of Trouble Ticket Resolution Closed to the CLEC or IXC Carrier - Date and Time of Trouble Ticket Referred to the ILEC) - (Customer Hold Times) is > 24 hrs / (Count of Trouble Tickets Resolved in Reporting Period)] \times 100$$

Mean Time To Restore – Found OK / Test OK:

$$\Sigma [(Date and Time of Trouble Ticket Resolution Closed to the CLEC or IXC Carrier as Found OK/Test OK - Date and Time of Trouble Ticket Referred to the ILEC) - (Customer Hold Times)] / (Count of Trouble Tickets Resolved in Reporting Period as Found OK/Test OK)]$$

Business Rules

1. A trouble report or trouble ticket is any record (whether paper or electronic) used by the ILEC for the purposes of tracking related action and disposition of a service repair or maintenance situation.
2. Elapsed time is measured on a 24-hour, seven-day per-week basis, without consideration of weekends or holidays.
3. Multiple reports in a given period are included, unless the multiple reports for the same customer is categorized as “subsequent” (an additional report on an already open ticket).
4. “Restore” means to return to the normally expected operating parameters for the service regardless of whether or not the service, at the time of trouble ticket creation, was operating in a degraded mode or was completely unusable. A trouble is “resolved” when the ILEC issues notice to the CLEC or IXC Carrier that the customer’s service is restored to normal operating parameters.
6. Customer Hold Time or Delayed Maintenance Time resulting from verifiable situations of no access to the end user’s premises, or other CLEC or IXC Carrier caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval.

Exclusions:

- Trouble tickets that are canceled at the CLEC’s or IXC Carrier’s request
- CLEC, IXC Carrier, CPE (Customer Premises Equipment), or other customer caused troubles
- ILEC trouble reports associated with administrative service
- CLEC or IXC Carrier requests for informational tickets
- Trouble tickets created for tracking and/or monitoring circuits
- Tickets used to track referrals of misdirected calls

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standard

Mean Time to Restore	- Below DS3	<= 2.0 Hours
	- DS3 and Above	<= 1.0 Hour
% Out of Service > 24 Hrs		- Diagnostic
Mean Time to Restore – Found OK / Test OK		- Diagnostic

ILEC Performance Measurements and Standards

MAINTENANCE & REPAIR

Measurement: JIP-SA-11 Repeat Trouble Report Rate

Description

The Repeat Trouble Report Rate measures the percent of maintenance troubles resolved during the current reporting period that had at least one prior trouble ticket any time in the preceding 30 calendar days from the creation date of the current trouble report.

Calculation Methodology

Repeat Trouble Report Rate:

$$\frac{[(\text{Count of Current Trouble Reports with a previous trouble, reported on the same circuit, in the preceding 30 calendar days})]}{(\text{Number of Reports in the Report Period})} \times 100$$

Business Rules

1. A trouble report or trouble ticket is any record (whether paper or electronic) used by the ILEC for the purposes of tracking related action and disposition of a service repair or maintenance situation.
2. A trouble is resolved when the ILEC issues notice to the CLEC or IXC Carrier that the circuit has been restored to normal operating parameters.
3. If a trouble ticket was closed out previously with the disposition code classifying it as FOK/TOK/CPE/IXC, then the second trouble must be counted as a repeat trouble report if it is resolved to ILEC reasons.
4. The trouble resolution need not be identical between the repeated reports for the incident to be counted as a repeated trouble.

Exclusions:

- Trouble tickets that are canceled at the CLEC's or IXC Carrier's request
- CLEC, IXC Carrier, CPE (Customer Premises Equipment), or other customer caused troubles
- ILEC trouble reports associated with administrative service
- Subsequent trouble reports – defined as those cases where a customer called to check on the status of an existing open trouble ticket

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standards

Repeat Trouble Report Rate	- Below DS3	<= 6.0%
	- DS3 and Above	<= 3.0%

ILEC Performance Measurements and Standards

GLOSSARY

Term	Definition
Access Service Request (ASR)	A request to an ILEC to order new service, or request a change to existing service, which provides access to the local exchange company's network, under terms specified in the local exchange company's special or switched access tariffs
Business Days	Monday thru Friday excluding holidays
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the ILEC that prevents the ILEC from completing an order, including the following: CLEC or IXC Carrier is not ready; end user is not ready; connecting company, or CPE (Customer Premises Equipment) supplier, is not ready
Facility Check	A pre-provisioning check performed by the ILEC, in response to an access service request, to determine the availability of facilities and assign the installation date
Firm Order Confirmation (FOC)	The notice returned from the ILEC, in response to an Access Service Request from a CLEC or IXC Carrier that confirms receipt of the request, that a facility has been made, and that a service request has been created with an assigned due date
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the ILEC to change the due date or for other reasons, although no change to the ASR was requested by the CLEC or IXC Carrier
Project	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning processes
Query/Reject	An ILEC response to an ASR requesting clarification or correction to one or more fields on the ASR before an FOC can be issued
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Supplement ASR	A revised ASR that is sent to change due dates or alter the original ASR request. A "Version" indicator related to the original ASR number tracks each Supplement ASR.

ATTACHMENT B

Joint Competitive Industry Group Proposal

OFFERED INSTALLATION INTERVALS

The purpose of this document is to establish a definition of the offered installation interval referenced in ILEC Performance Measurement JIP-SA 3 (Offered Versus Requested Due Date).¹

Definition

The Offered Interval may not be longer than the least of:

1. The Standard Interval

DS0: 7 business days
DS1: 7 business days
DS3: 14 business days

2. The Interval Stated (published) by the ILEC; or

3. The Interval actually provided to the ILEC's Affiliates or the ILEC's Retail Customers in that state

Provided, however, that if the carrier-customer requests a longer interval, the customer-requested interval shall become the offered interval.

Issued: January 18, 2002

¹ See Joint Competitive Industry Group Proposal, ILEC Performance Measurements & Standards in the Ordering, Provisioning, and Maintenance & Repair of Special Access Service, Version 1.1, Issued January 18, 2002, at page 6.

Tab 2

LAWLER, METZGER & MILKMAN, LLC

1909 K STREET, NW
SUITE 820
WASHINGTON, D.C. 20006

A. RICHARD METZGER, JR.
PHONE (202) 777-7729

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

February 12, 2002

BY HAND

William Caton, Acting Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Mr. Caton:

On February 12, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to adopt an enforcement plan providing remedies for poor or discriminatory special access provisioning and maintenance by Tier 1/Class A incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A. Richard Metzger, Jr.

Attachments

cc: Chairman Powell (w/o attachments)

February 12, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Joint Competitive Industry Group Proposal Regarding
Essential Elements of a Special Access Provisioning Enforcement Plan

Dear Chairman Powell:

On January 22, 2002, the undersigned competitive telecommunications carriers, trade associations and the eCommerce & Telecommunications Users Group (eTUG) (the "Joint Competitive Industry Group") wrote to you, urging that the Commission adopt performance measures, performance standards, and reporting requirements to govern the provision of special access services by incumbent local exchange carriers (LECs). The comments filed on January 22, 2002 demonstrate that facilities-based competitive carriers rely on special access services provided by incumbent LECs to offer the high bandwidth services vital to business customers, and that these "last mile" links are critical to the development of facilities-based competition for local services. The comments also provide overwhelming support for adoption of the measures, standards and reporting requirements proposed by the Joint Competitive Industry Group, applicable to the provision of all interstate special access services by Tier 1/Class A incumbent LECs, including those services provided to the incumbent LECs' interexchange affiliates and retail customers.

The measures, standards and reporting requirements proposed by the Joint Competitive Industry Group are likely to induce better performance by incumbent LECs in the ordering, provisioning, maintenance, and repair of special access services. Requiring incumbent LECs to report on their performance to their affiliates, competitors and retail customers also will deter discrimination, as well as allowing the Commission more easily to assess the validity of allegations of unreasonable discrimination against competitors or other customers.

If the reporting requirements reveal that any incumbent LEC is engaging in unjust or unreasonable practices, or unreasonable discrimination, in violation of Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201-202, the Commission should be prepared to take swift, effective and certain enforcement action, sufficient to deter anti-competitive behavior on the part of the incumbent LECs. To this end, the Joint Competitive Industry Group offers the attached Essential Elements of a Special Access Provisioning Enforcement Plan (Attachment A), a unified competitive industry and user group view regarding remedies for poor or discriminatory special access provisioning.

Chairman Powell
February 12, 2002
Page 2

The Joint Competitive Industry Group urges the Commission to adopt the Group's proposal regarding enforcement, as well as its proposed performance metrics and installation intervals.

Sincerely,

The Joint Competitive Industry Group

Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Kelsi Reeves
Vice President – Federal Government
Relations
Time Warner Telecom

Rebecca H. Sommi
Vice President Operations Support
Broadview Networks

Donna Sorgi
Vice President, Federal Advocacy
Law and Public Policy
WorldCom, Inc.

Audrey Wright
Director, Domestic Regulatory Affairs
Cable & Wireless

R. Gerard Salemme
Senior Vice President, External Affairs
XO Communications, Inc

David A. Fitts
Director-Regulatory Affairs
Choice One Communications Inc

John Windhausen, Jr.
President
**Association for Local Telecommunications
Services**

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

H. Russell Frisby, Jr.
President
**Competitive Telecommunications
Association**

Paul Kouroupas
Senior Counsel, Worldwide Regulatory
and Industry Affairs
Global Crossing, Ltd.

Brian Moir
General Counsel
**ECommerce & Telecommunications Users
Group**

Jake E. Jennings
Vice President – Regulatory Affairs
NewSouth Communications

Chairman Powell
February 12, 2002
Page 3

Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
Uzoma Onyeije
William Caton

ATTACHMENT A

Joint Competitive Industry Group Proposal

Essential Elements of a Special Access Provisioning Enforcement Plan

General

1. Remedies should include both payments to special access customers of the incumbent local exchange carriers (LECs) and forfeitures paid to the United States Treasury
2. Penalties must be of a magnitude sufficient to deter anti-competitive behavior
3. Penalties should increase with the magnitude of the performance failure
4. Penalties should increase for repeated performance failure
5. The Commission should state that any remedies specific to special access provisioning are in addition to the normal complaint process and any private remedies that customers may have

Payments to Customers of Incumbent LECs

6. Customers of incumbent LECs should be able to exercise any or all of the following options with respect to payments to customers
 - a. Self-executing payments to customers, consistent with the Commission's authority
 - b. Seek damages by filing a complaint at the FCC or in district court. The Commission should establish a streamlined process for complaints alleging that an incumbent LEC has failed to comply with the special access performance standards or parity requirements.

Forfeitures

7. The Commission should establish a standard methodology for calculating proposed forfeitures. Forfeiture amounts should be sufficiently high to serve as a deterrent to anti-competitive behavior, rather than simply a cost of doing business
8. The Commission should establish a streamlined process for imposing forfeitures

Non-monetary penalties

9. For significant abuses of the performance requirements, the Commission should establish non-monetary penalties, such as suspension of Section 271 or pricing flexibility authority, and injunctive relief requiring the incumbent LEC to improve its performance

Audits

10. Each incumbent LEC should be required to undergo an annual independent audit of its performance reporting, the auditor to be chosen by the FCC, but paid by the incumbent LEC
11. Competitive carriers, at their option, should have the right to audit the incumbent LECs' performance reports. The requesting carrier would pay for the audit, unless the audit reveals inaccuracies in the incumbent LEC's report, in which case the incumbent LEC would pay for the audit

Special Task Force

12. The Commission should establish a special enforcement team to focus on special access performance, similar to the BA-NY anti-backsliding team

Tab 3

LAWLER, METZGER & MILKMAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

RUTH MILKMAN
PHONE (202) 777-7726

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

June 18, 2002

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

On June 18, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Dorothy Attwood in this docket. Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), a copy of the letter and attachments are being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,



Ruth Milkman

Attachments

cc: Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
John Stanley
Uzoma Onyeije

June 18, 2002

Dorothy Attwood
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Re: Joint Competitive Industry Group Proposal Regarding
Performance Metrics for Interstate Special Access Services

Dear Ms. Attwood:

On January 22, 2002, the Joint Competitive Industry Group (JCIG) urged the Commission to adopt a set of Performance Measurements & Standards applicable to the provision of all interstate special access services by Tier 1/Class A incumbent LECs. In a subsequent meeting, the Wireline Competition Bureau requested that the JCIG provide the Commission with additional information regarding the measurements and associated business rules. The Bureau asked that the JCIG discuss the problem that each measurement is designed to address; the business impact of the problem; the manner in which the measurement solves the problem; and the burden on the reporting incumbent LEC. The attached summary (Attachment A) addresses each of these questions.

In addition, during the months that have passed since the JCIG asked the Commission to adopt Performance Measurements & Standards, the Minnesota and Tennessee state commissions have adopted performance measurements for special access services that are very similar to the JCIG proposal. *See In the Matter of Qwest Wholesale Service Quality Standards*, Before the Minnesota Public Utilities Commission, Docket No. P-421/M-00-849, Order Setting Reporting Requirements and Future Procedures (March 4, 2002) (Attachment B); Order Denying Reconsideration and Modifying Order On Own Motion (May 29, 2002) (Attachment C); *In Re Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Tennessee Regulatory Authority, Docket No. 01-00193, Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms (May 14, 2002) (Attachment D). Copies of the TRA and Minnesota PUC orders are enclosed, for your convenience.

Dorothy Attwood

Page 2

The Joint Competitive Industry Group believes that the information provided today supplements the record in a way that should facilitate the Commission moving forward expeditiously to adopt the Group's proposals regarding performance measures, standards and reporting requirements.

Sincerely,

The Joint Competitive Industry Group

Douglas Jarrett
Keller & Heckman
American Petroleum Institute

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

John Windhausen, Jr.
President
Association for Local Telecommunications Services

Jake E. Jennings
Vice President – Regulatory Affairs
NewSouth Communications

Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Kelsi Reeves
Vice President – Federal Government Relations
Time Warner Telecom

Audrey Wright
Director, Domestic Regulatory Affairs
Cable & Wireless

Donna Sorgi
Vice President, Federal Advocacy Law and Public Policy
WorldCom, Inc.

H. Russell Frisby, Jr.
President
Competitive Telecommunications Association

R. Gerard Salemme
Senior Vice President, External Affairs
XO Communications, Inc

Brian Moir
General Counsel
Ecommerce & Telecommunications Users Group

Attachments

cc: Jeffrey Carlisle
John Stanley
Marlene Dortch

Michelle Carey
Uzoma Onyeije

ATTACHMENT A

Joint Competitive Industry Group Origin of Metrics

ORDERING

The Ordering measures cover the important first step in the special access provisioning process. This includes the ILEC's response to an Access Service Request (ASR) issued by the competitor, where the ILEC provides the due date on which they expect to provision the service—the Firm Order Confirmation (FOC) date.

General Business Rules or Exclusions:

Projects are included in these measures as the ILECs should be able to provide FOC Due Dates for projects in a timely manner. ILECs also have varying rules and levels for determining what constitutes a "project." To exclude projects could mean that a significant volume of ASRs would not be measured at all.

"Unsolicited FOCs," that is, changes to the FOC Due Date that are initiated by the ILEC without a request from the competitor, as well as "cancelled ASRs", and "record ASRs" are also excluded from these measures.

FOCs for "disconnect ASRs" are also excluded because these service requests are usually easily addressed by the ILECs in the normal course of business and are not customer-affecting. Including disconnect ASRs in the ordering metrics would skew the results.

JIP-SA-1 FOC RECEIPT

Problem: ILECs have taken excessive amounts of time to respond to clean ASRs, with average response at times as high as 10 or more business days. And, in some instances, ILECs do not perform a facilities check prior to issuing the FOC.

Business impact: FOCs provide the due date on which the requested circuit(s) will be installed. Therefore, competitors cannot inform customers when their service will be installed until they receive a FOC from the ILEC. Late or delayed FOCs prevent carriers and customers from planning the installation process and frustrate customers--especially when they are requesting service within a reasonable period of time. The competitors' retail customers (particularly large business or institutional users) must coordinate personnel, resources and third-party vendors to make certain that the installation occurs

efficiently on the due date, and cannot do so until the date is confirmed. Business customers have also reported that they have received faster notification when ordering directly from the ILECs.

Proposed measurement as a solution: This measurement will ensure that FOC Due Dates are being provided in a timely manner, and if not, identify that there is a problem that needs to be addressed. The performance standard requires the submission of FOCs for DS0 or DS1 circuits within 2 business days and DS3 circuits within 5 business days of the submission of a "clean" ASR at least 98% of the time--thus requiring the ILEC to act promptly to provide installation dates that can be passed on to the end-user customer. Because it is anticipated that the ILEC will, at minimum, conduct an electronic facilities check, the due date it provides should be a reliable one, unless facility problems are encountered on the plant test date (PTD). The performance standard provides the ILECs sufficient time to ensure that the FOC accurately reflects the results of ILEC's facilities check. Moreover, each FOC received from the ILEC is accounted for in the metric, including those that are issued as a result of supplemental ASRs.

The diagnostic "FOC Receipt Distribution" is meant to show the number of days (*i.e.*, 0 days, 1 day, 2 days, through 10 days, and greater than 10 days) that have elapsed from the date the clean ASR is sent to the ILEC until the date the FOC is received in order to show the overall pattern and identify any developing problems.

A separate diagnostic records ASRs withdrawn at the ILEC's request because of lack of facilities or other reasons. This highlights those situations where the ILEC requests that an ASR be withdrawn, as these ASRs would then not be captured in any measure.

Reason not burdensome: Most BOCs already voluntarily provide reporting on FOC receipt to some competitors, often within intervals comparable to, or shorter than, the JCIG's proposed standard. Moreover, ILEC systems already capture this information for the ILECs' own use, at least for retail services. The JCIG proposal merely standardizes this process for the industry.

JIP-SA-2 FOC RECEIPT PAST DUE

Problem to be addressed: The JIP-SA-1 FOC Receipt measure tallies the FOCs that are returned, while this measure--FOC Receipt Past Due--tracks "clean" ASRs that have been sent to the ILEC but have not received a response or FOC, as of the end of the reporting period. The result is expressed as a percentage of the total number of ASRs sent during the reporting period. Experience has shown that issues with ILEC work-load, staff reductions, or other problems, can mean that ASRs simply are not replied to and without this measure these problems will go undetected, causing an obvious impact on the competing carrier's customers and the competing carrier's reputation.

Business impact: Competitors and business users must have a means of determining when ASRs are not being responded to before the problem becomes chronic or reaches

unacceptably high levels. The inability to access FOCs in a timely manner affects competitors' ability to meet end-user expectations. Past due FOCs often result in individual case escalations which are burdensome and resource-draining for both competitors and ILECs.

Proposed measurement as a solution: This measure will ensure that any outstanding FOCs are kept at manageable levels, and will, at a minimum, help identify instances when backlogs are developing or increasing, so that action can be taken to resolve problems well before they become a major concern for both competitors and business end users.

The expectation is that less than 2% of FOCs, without an open query/reject, should be past due and that the ILECs would report whether those FOCs are 1-5 days late, 6-10 days late, etc. The business rules have been designed to ensure that situations beyond the ILEC's control, such as ASRs that have been rejected, or queried, or where clarification has been requested, are not counted. A separate diagnostic measure of those "with open Query/Reject" is included to ensure that the number of these open FOCs are visible to both the ILEC and the ordering CLEC.

Reason not burdensome: These requirements should not be burdensome, as the actual query or reject may be electronic and, even if it is manual, the ILEC's system will normally have a status indicator with a flag showing that the ASR is waiting on a response from the competitor.

JIP-SA-3 OFFERED VERSUS REQUESTED DUE DATE

Problem to be addressed: Competitors submit ASRs requesting a specific date for installation of special access facilities, however, even when the requested due date is equal to or greater than the ILEC stated standard interval, the ILECs often ignore the requested due date and simply respond with a generic or system-generated date, putting the competitor in the position of appearing confused or disorganized to its customer.

Business impact: In order to compete effectively with the ILECs, competitors must be in a position to negotiate due dates up front with customers with a high degree of confidence that the dates negotiated will indeed be agreed to by the ILECs provisioning the service. However, due to existing ILEC systems, it often is impossible to order facilities more than 30 days prior to the requested due date. Therefore, competitors have a very short window in which to provide end-user customers with a specific date and time for their installation and to align customer needs with the availability of facilities.

Proposed measurement as a solution: This measure tracks only those ASRs where the requested due date is equal to or greater than the ILEC's standard interval. The measurement assumes that the ILEC will check its existing workforce and load balance on the requested date and offer to install facilities in accordance with the JCIG proposed 7-day installation interval for DS0s and DS1s and the 14-day installation interval for DS3s.

Under this metric, therefore, the date offered by the ILECs for the installation interval should be the same as the customer requested due date for installation 100% of the time.

The measure includes a diagnostic that shows how many days the ILEC's offered due date exceeds the customer requested due date.

Reason not burdensome: This measure simply compares two dates, the Requested Due Date and the Offered Date (FOC Due Date). Both dates should be readily available in the ILEC's provisioning system.

PROVISIONING

Provisioning measurements cover the ILEC's performance with respect to meeting the FOC Due Date. These measures provide a complete picture of the provisioning activity, and show whether service is being provided in a timely and quality manner. The five (5) provisioning measures demonstrate:

- whether the service is completed on time;
- when the service is completed late, how late;
- how long on average it takes the ILEC to install the service;
- whether there are uncompleted circuits that are past due; and
- how many circuits experience trouble within the first 30 days of installation.

General Business Rules or Exclusions:

"Projects" are included in these measures because the ILECs should be held responsible to meet the FOC Due Dates that they have provided (typically as a result of negotiations) for projects. ILECs also have varying rules and levels for determining what constitutes a project. To exclude projects could mean that a significant volume of circuits or ASRs would not be measured at all.

"Unsolicited FOCs," that is, changes to the FOC Due Date that are initiated by the ILEC without a request from the competitor, "cancelled ASRs," and "record ASRs" (*i.e.*, ASRs that are sent only to correct administrative information and require no physical work) are excluded from these measures.

FOCs for "disconnect ASRs" are also excluded because a response to these service requests is not required by competitors, in the normal course of business. Including disconnect ASRs in the ordering metrics would skew the results.

JIP-SA-4 ON TIME PERFORMANCE TO FOC DUE DATE

Problems to be addressed: The FOC Due Date is used to coordinate ILEC staff, competitor staff, end-user customer staff, and when required, third-party suppliers such as

equipment vendors. Therefore, it is essential that the ILEC meet this date. ILEC performance in this area is very inconsistent, however, and the due date is often missed.

ILECs can and do take advantage of Customer Not Ready (CNR) situations by counting CNRs as though the ILEC has met the proposed installation date when, in reality, the ILEC technician may not have shown up for the appointment, or may have failed to follow instructions as to whom to meet and where. The net result is that the customer's service is not delivered when expected, causing customer frustration and dissatisfaction with the competitor.

Business Impact: A missed installation means that service will not be available for a particular end-user customer. If the ILEC does not provision the service on the FOC Due Date, the end-user customer may suffer from an inability to meet its operation's needs, and blame the competitor. The competitor is left to make new arrangements with each of the parties involved with installing the service, causing greater costs for all, as well as generating customer dissatisfaction. Moreover, the end result may be (and has been) that the customer may decide to cancel service with the requesting competitor and go to another carrier--CLEC or ILEC.

Competitors are often required to provide their business and institutional customers with Service Level Agreements (SLAs) requiring payment of significant penalties to the end-user customer if service is not installed by the promised due date. Likely because the ILECs are dominant in the special services market, business customers report that ILECs rarely, if ever, provide such guarantees with associated penalties.

ILECs have used CNRs as way to absolve themselves of any responsibility for a missed installation--even when the ILEC's technician caused the delay. This sends a signal to the business end-user customer that the blame for the failed installation does not belong with the ILEC.

Proposed Measurement as a Solution: This metric measures the percentage of circuits that are completed on or before the due date. Under the proposed standards, the ILEC is held accountable for meeting its offered due date more than 98% of the time. Because the due date has been previously confirmed by the ILEC, the date should be met nearly 100% of the time.

The business rules for the metric are defined so that the ILECs are held responsible for completing all circuit installations on an ASR before being credited for meeting the installation due date. This prevents the ILEC from claiming that it met an installation due date by meeting the deadline for one circuit on an ASR that includes multiple circuits. The business rules also permit the ILEC to take credit for meeting the due date in a CNR situation only when that CNR is verified (*i.e.*, confirmed by the competitor) as being beyond the incumbent's control.

The measure includes a diagnostic OTP "Without" consideration of CNRs because it is critical that competitors and business users are able to ascertain the ILEC's performance

for circuits that were actually installed on time. Including circuits that have not been installed for CNR reasons would skew the results for this diagnostic.

Reason not burdensome: ILECs already know and provide information regarding the FOC Due Date and the installation completion date. All ILECs use some type of CNR code in their order tracking system and some ILECs already provide data on CNR designations to competitors. Therefore, it should be easy to manipulate this information to provide reporting for on-time performance that either includes or excludes any instances where a CNR code is present.

JIP-SA-5 DAYS LATE:

Problems to be addressed: End-user customers expect that when a Due Date is missed, every effort will be made to recover promptly and to get the service installed as quickly as possible. While the ILEC may miss an installation due date, there is no guarantee that the facilities will be installed the next day or even the next week after such a miss. Competitors have no assurance that the ILEC will assign a past-due circuit the same priority as other circuits for which the FOC Due Date has not yet passed.

Business impact: Every day that an installation is late can mean lost revenue or business for the end-user customer; end-users' dissatisfaction with competitors increases significantly each additional day the circuit is late.

Proposed measurement as a solution: The Days Late measure captures the range of delays for those circuits that are not completed on the FOC Due Date and for which there is no verifiable CNR. The metric measures completed installations only and the proposed standard offers ILECs the flexibility to be, on average, up to 2.99 days late. The Days Late distribution diagnostic details the number of days that an installation is delayed. A second diagnostic, "Average Days Late Due to Lack of ILEC Facilities" provides data critical to root cause analysis to determine whether the ILEC is providing access to its facilities in a timely and nondiscriminatory manner. This diagnostic can also be compared to the related UNE measure to determine whether the ILEC is discriminating in its provision of UNEs as compared to special access.

Reason not burdensome: The data required to produce this measure, and these specific breakouts, do not include any special requirements. This information can be derived from data already maintained by the ILECs.

JIP-SA-6 AVERAGE INTERVALS – REQUESTED/OFFERED/INSTALLATION:

Problem to be addressed: Special access service delivery has deteriorated over time. Offered installation date intervals are getting longer and actual installation intervals have

increased. ILECs do not provide reports for this metric, making it almost impossible for competitors to determine the magnitude of the increased provisioning interval situation.

Business impact: Every business needs to be aware of macro service levels. This measure captures the three important aspects of the provisioning interval triangle: On average, what is being requested, what is being offered, and how long it actually takes to install the service. This data is needed to identify excessive provisioning intervals and to help direct the parties' efforts where specific action is required.

Proposed measurement as a solution: The submission of ILEC reports that detail the average interval of customer requested due date, the ILEC average offered due date and the average time it took the ILEC to complete the installation, will enable early detection of any erosion in ILEC provisioning. Once these measures are established, the goal is to have the customer requested interval, the ILEC offered interval and the actual installation interval be the same.

Reason not burdensome: The data points required to produce this measure exist today in the ILEC ordering/provisioning system: (1) ASR Sent Date, (2) Requested Due Date, (3) FOC Due Date, and (4) ILEC Completion Date.

JIP-SA-7 PAST DUE CIRCUITS

Problem to be addressed: Competitors' experience demonstrates that past due circuits can escalate quickly into a major problem for both competitors and ILECs. ILECs currently do not measure and report delays for past due circuits. Therefore, the ILECs have no incentive to prioritize completion of missed circuits because they already have been penalized by having to credit the competitor's bill for missing the original due date. No data currently is captured to determine the frequency with which the ILEC fails to install circuits by their FOC Due Date or the interval between the FOC Due Date and the actual installation date. When a FOC Due Date has passed, and a circuit has yet to be installed, the magnitude of the delay is not currently captured; therefore, once a circuit installation is late, there is at present no incentive for the ILEC to expedite its completion.

Business impact: Quality customer service dictates that when a carrier misses an installation due date, the customer's installation will be immediately rescheduled. Moreover, competitors are often forced to pay SLA penalties to customers. The ILEC incurs no penalty and suffers no business consequences for poor performance. Instead, the affected competitor must try and save its relationship with the end-user customer. Further, while business customers might readily acknowledge that the delay is the result of ILEC poor performance, they are less inclined the next time they need facilities to work with a competitor who was unable to deliver the promised results.

Proposed Measurement as a Solution: The JIP-SA-4 On Time Performance to FOC Due Date and JIP-SA-5 Days Late measures are based on circuits that are actually completed. JIP-SA-7 provides a snapshot of circuits for which the FOC Due Date has

passed, but installation still has not been completed as of the end of the reporting period. It is critical that competitors have a means of monitoring uncompleted orders in order to assess the overall impact on their end-user customers.

The goal for the information derived from this metric is to provide ILECs with an incentive to install already late facilities as quickly as possible after the missed installation date, when the miss was the ILEC's fault. Today, the ILECs do not treat competitor-ordered circuits with a missed due date as a priority.

This metric looks at incomplete past due circuits where a FOC with a due date has been received. The metric also provides information regarding the source of the problem for the missed installation. As such, there is a diagnostic detailing the percentage of past due circuits that are a result of competitor reasons. Under the proposed standard for this metric, fewer than 3% of the total circuits should be more than 5 days past due for ILEC reasons.

The metric also includes a diagnostic for past due circuits identified with "no facilities" so that an analysis can be made and ILEC "no facilities" responses can be managed proactively by the competitor.

Reason not burdensome: Results are separated between FOC Due Dates held due to competitor reasons and FOC Due Dates held for ILEC reasons, with a separate breakdown of those held due to a lack of ILEC facilities. These are normal status codes that should be available in any large ILEC provisioning system.

JIP-SA-8 NEW INSTALLATION TROUBLE REPORT RATE:

Problems to be addressed: New installation troubles, while not infrequent, are particularly problematic for competitors. Once special access service is installed, business end-user customers (especially those already frustrated by a long wait for the installation in the first place) expect and need the service to function trouble-free. They certainly should not experience problems in the first 30 days of such service.

Business impact: Because installations can occur under harried circumstances (especially when a customer has been rescheduled as a result of a missed appointment), these early "troubles" are most often the result of poor quality or incomplete work done on the installation. The end-user customer naturally blames the party it has contracted with for the service--the competitor.

Proposed measurement as a solution: This measure assesses the quality and completeness of provisioning work performed by the ILEC by identifying the number of new circuits that fail within the first 30 days of service because of poor installation quality or incomplete installation work. Additionally, since there is no uniformity in the way in which ILECs handle new installation troubles (e.g., some maintain new installations in the

provisioning center for a period of time, while others immediately refer such problems to their maintenance organization), reporting may highlight the tendency for competing carriers to get caught between ILEC departments.

Reason not burdensome: Trouble reporting on new circuit installations is a normal industry practice and should not impose any additional burden on the ILECs. The proposal seeks only to standardize industry practice.

MAINTENANCE & REPAIR:

Maintenance and Repair metrics measure the quality of the circuits provisioned by the ILEC as well as their performance in maintaining installed circuits.

General Business Rules or Exclusions:

Troubles caused by competitors, CPE (Customer Premises Equipment), or other customer caused troubles are excluded from these measures, as well as those troubles cancelled at the competitor's request.

"Found OK" and "Test OK" trouble codes are included in all M&R metrics.

Administrative and informational types of trouble tickets are also excluded.

JIP-SA-9 FAILURE RATE:

Problem to be addressed: Business end-user customers use special access circuits predominantly for voice and high-speed data traffic. Their expectation and requirement, therefore, is that the circuits will rarely fail.

Business impact: Circuit troubles or down time often mean interruption to the business end-user's day-to-day operations, ultimately resulting in lost revenue for the end-user customer. Because competitors depend on the reliability of ILEC facilities for special access services, the quality of the ILEC maintenance and repair service is critical. Further, when there is a problem with a circuit, business end-user customers blame the competitor and expect the competitor to pay penalties under the terms of SLAs, regardless of whether the trouble was actually in the ILEC facilities or otherwise caused by the ILEC.

Proposed measurement as a solution: The Failure Rate metric will enable competitors to monitor the quality of all the circuits installed by the ILEC. This measurement reports on the number of troubles received by the ILEC during one month as a percentage of the number of ILEC circuits in service. The reported result is annualized to provide a snapshot of failed ILEC circuits experienced by competitors on a yearly basis. Although a

Trouble Report rate of 2% in a month may not appear to be significant, when projected as an annualized rate a failure rate of 24% of installed circuits within a year's time it can jeopardize competitors' ability to win new business. An annualized rate also reveals both the potential impact failures have on the competitor's entire customer base (with a failure rate of 1 in 4 circuits provisioned, it is likely that a very large percentage of a competitor's end-user customers will experience a failure of some type every year), and the likelihood that end-user customers will experience repeated failures.

Reason why not burdensome: This metric is a standard industry measurement and ILECs routinely report this information today. The BOCs strive to deliver network availability for voice and data customers of 99.999%. At a 10% annual failure rate and a two-hour Mean Time to Repair Rate per ticket for a DS1, the JCIG proposal will enable a network availability of 99.998%.

JIP-SA-10 MEAN TIME TO RESTORE:

Problem to be addressed: After a circuit goes down, end-user customers expect their service provider to restore the failed circuit in the shortest amount of time. A response time that exceeds the end-user customer's expectations will be perceived as poor performance on the part of the competitor. This metric will establish consistent ILEC repair interval parameters that will allow competitors to manage their end-user customer's repair expectations.

Business impact: Business end-user customers depend on the reliability of the ILEC-provided circuit for transmitting voice and data traffic. Circuit outages are disruptive and have the potential to be costly for the end-user in terms of lost revenue. The mere perception that competitors provide poor or inadequate customer service negatively affects the competitor's ability to acquire and maintain business end-user customers.

Proposed measurement as a solution: ILEC promptness in restoring circuits to normal operating levels, when a problem or trouble is referred to them, is essential to maintaining good customer service and relations. The calculation for this metric is based on the elapsed time from the submission of a trouble report to the ILEC, to the time the ILEC reports the trouble has been resolved. The expectation is that a DS0 or DS1 will be restored in less than two hours on average and a DS3 circuit will be restored within one hour or less on average. A diagnostic component is included in this metric that captures the percentage of out of service troubles exceeding 24 hours. Out of service troubles lasting longer than 24 hours can have a catastrophic impact on the operations of business end-user customers. ILEC repair delays also damage the competitor's service delivery reputation. An additional diagnostic is included in this metric that captures the number of trouble reports that are coded by the ILECs as "Found OK/Test OK." This is particularly

important since the increase in the use of such codes is likely to lower overall MTTR and may reflect an attempt to mask actual performance.

Repair delays caused by the end user, equipment vendor, or the competitor, such as no access to the customer premises are subtracted from the total repair time.

Reason not burdensome: Mean Time to Restore is a standard industry measure and ILECs routinely report this information today.

JIP-SA-11 REPEAT TROUBLE REPORT RATE:

Problem to be addressed: A source of significant annoyance and dissatisfaction for special access end-user customers is the occurrence of multiple circuit troubles or failures within 30 days of a previously closed trouble report. End-user customers perceive such repeat troubles as evidence of poor workmanship, or poor facility quality on the part of the competitor.

Business impact: Multiple circuit troubles or outages within a short time period result in significant customer annoyance and dissatisfaction. As stated above, business end-user customers view the experience as evidence that competitors provide poor workmanship or poor quality facilities. Even if a business end-user customer acknowledges that the ILEC is the source of the problem, the end-user often believes the job would have been done better and faster by the ILEC if the end user had not switched to a competitor's service.

Proposed measurement as a solution: This metric measures the quality of the repair work performed by the ILEC. It identifies the number of repeat circuit trouble reports that may be caused by facility quality problems, or incomplete or poor quality repair work performed by the ILEC.

Reason not burdensome: Repeat trouble reporting is standard industry practice and should not present any undue burden. Including this metric will standardize the industry process.

Tab 4

LAWLER, METZGER & MILKMAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

RUTH MILKMAN
PHONE (202) 777-7726

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

June 18, 2002

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. – Suite TW-A325
Washington, D.C. 20554


Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for
Interstate
Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

On June 18, 2002, the Joint Competitive Industry Group submitted a written *ex parte* presentation to Chairman Powell, urging the Commission to adopt an enforcement plan providing remedies for poor or discriminatory special access provisioning and maintenance by Tier 1/Class A incumbent local exchange carriers.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,


Ruth Milkman

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
John Stanley
Uzoma Onyeije

June 18, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: Joint Competitive Industry Group Proposal Regarding
Special Access Provisioning Remedies

Dear Chairman Powell:

On February 12, the undersigned competitive telecommunications carriers, trade associations and user groups (the "Joint Competitive Industry Group") wrote to you, urging that the Commission adopt performance measures, performance standards, and reporting requirements to govern the provision of special access services by incumbent local exchange carriers. The Joint Competitive Industry Group also noted that the Commission should be prepared to take swift, effective and certain enforcement action, and offered "Essential Elements of a Special Access Provisioning Enforcement Plan," a unified competitive industry and user group view regarding remedies for poor or discriminatory special access provisioning.

The Joint Competitive Industry Group continues to support that plan, and writes today to amplify the discussion of two points of the Enforcement Plan, Point 6 (Payments to Customers) and Point 8 (Forfeitures). The Commission can promote swift, effective and certain enforcement by providing for: (1) service credits; (2) an expedited complaint process; and (3) a streamlined forfeiture process; as described in Attachment A to this letter. The proposals contained in Attachment A do not affect a customer's right under the statute to seek damages or injunctive relief either at the Commission or in federal court or to pursue any other private remedy.

The three proposals (service credits, expedited complaint process, and streamlined forfeiture process) are complementary. Service credits and complaints would result in payments to individual customers, while the forfeiture process would result in payment to the U.S. Treasury. Service credits are designed to ensure that customers do not pay the full price for substandard special access service. If the customer's damages exceed the amount of the service credit, the customer may use the expedited complaint process to collect damages quickly and without extensive litigation costs. The expedited complaint process is designed to provide swift and sure compensation for customers, based on information from the carrier itself. The streamlined forfeiture process is intended to penalize incumbent LECs for violations of the Communications Act, and to enhance their incentives to provision special access in a reasonable and non-discriminatory manner. As explained in our February 12 proposal, the Joint Competitive Industry Group believes these measures could reasonably be limited to only Tier 1 incumbent LECs, and not applied to smaller incumbent LECs.

The Joint Competitive Industry Group urges the Commission to adopt the Group's proposal regarding remedies, as well as its proposed performance measures, performance standards and reporting requirements.

Sincerely,

The Joint Competitive Industry Group

Douglas Jarrett
Keller & Heckman
American Petroleum Institute

John Windhausen, Jr.
President
Association for Local Telecommunications Services

Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Audrey Wright
Director, Domestic Regulatory Affairs
Cable & Wireless

H. Russell Frisby, Jr.
President
Competitive Telecommunications Association

Brian Moir
General Counsel
Ecommerce & Telecommunications Users Group

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

Jake E. Jennings
Vice President – Regulatory Affairs
NewSouth Communications

Kelsi Reeves
Vice President – Federal Government Relations
Time Warner Telecom

Donna Sorgi
Vice President, Federal Advocacy Law and Public Policy
WorldCom, Inc.

R. Gerard Salemmé
Senior Vice President, External Affairs
XO Communications, Inc

Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin

Dorothy Attwood
Jeffrey Carlisle
Michelle Carey

John Stanley
Marlene Dortch
Uzoma Onyeije

ATTACHMENT A

Joint Competitive Industry Group Proposal

Payments to Customers of Incumbent LECs And Forfeitures

Payments to Customers of Incumbent LECs

- Payments would take the form of service credits, damages, or both.

Service Credits

- Service credits are designed to ensure that customers do not pay full price for substandard service.
- Section 205 gives the Commission broad authority to compel incumbent LECs to incorporate automatic service credits for poor or discriminatory performance into their interstate special access tariffs and their carrier-to-carrier special access contracts.
- To avoid the prolonged process of suspending and investigating each incumbent LEC tariff after it is filed, the Commission should establish the specific terms that incumbent LECs must include in their tariffs and contracts.
- The tariff and contract terms prescribed by the Commission would correspond to the measures, standards, disaggregation levels, and exclusions set forth in the JCIG Proposal.
- At a minimum, for each measure in the JCIG Proposal, the tariff or contract term should take into consideration:
 - (for measures with a parity standard) how the credit will be calculated, with the level of credit escalating based upon the relationship between the incumbent LEC's performance for the customer versus the incumbent LEC's performance to itself, its affiliates, or its retail customers (e.g., a credit equal to X for performance that is Y worse than parity with the incumbent LEC's retail performance, with X increasing as Y increases); or
 - (for measures with a benchmark standard) how the credit will be calculated, with the level of credit escalating based upon the degree of deviation between the incumbent LEC's performance and the established benchmark (e.g., a credit equal to X for performance that is Y worse than the benchmark, with X increasing as Y increases)
- Depending on the metric, the credit would be applied against the recurring or non-recurring charge, as appropriate, for the particular reporting period.
- The credit would be applied separately to each disaggregated service level (e.g., DS0, DS1, etc.) for each measure as reported by the incumbent LEC.

- No matter how many separate standards were violated, the cumulative credit applicable to any given facility or service would be no more than 100% of the tariffed or contract charge for that facility or service.

Expedited Complaint Process

- The expedited complaint process is intended to compensate customers for damages incurred, without involving extensive litigation costs.
- Performance standards or parity benchmarks that an incumbent LEC misses for services provided to an individual customer would be flagged in customer-specific reports.

Liability Phase

- In the liability phase, a customer would file a form complaint with the FCC specifying the incumbent LEC at issue; the month during which the violation occurred; the performance standard or parity benchmark that was missed; and the number of circuits involved.
 - The customer would serve the complaint simultaneously on the incumbent LEC and the Commission.
 - The incumbent LEC would have 10 days to answer.
 - The customer would have 7 days to respond to the incumbent LEC's answer.
- Identification of a missed performance standard or benchmark would establish a rebuttable presumption that a violation of the Act and/or the Commission's rules has occurred. This rebuttable presumption would shift the burden of production to the incumbent LEC to demonstrate that it has not violated the statute or the Commission's rules.
 - The incumbent LEC would bear the heavy burden of submitting evidence sufficient to overcome the rebuttable presumption and avoid a finding of liability.
 - Absent a *force majeure* event shown to have *caused* the incumbent LEC to miss the benchmark standard or parity standard, the Commission would find that the incumbent LEC has violated the Commission's rules and the statute.
- The Commission would issue an order resolving the liability issue within 30 days of the incumbent LEC's answer.

Damages Phase

- Once the incumbent LEC's liability has been established, the customer would file a statement of damages, based either on its own calculations or as defined by a proxy schedule developed by the Commission.
- The incumbent LEC would have a brief opportunity to comment on the statement of damages.

- The Commission would award damages promptly.
- If appropriate, the amount of the damages the incumbent LEC is required to pay would be reduced by the amount of service credits the customer previously received.

Forfeitures

- The forfeiture process is intended to penalize incumbent LECs and to enhance their incentives to provision special access in a reasonable and nondiscriminatory manner.

Streamlined Forfeiture Process

- Incumbent LECs would provide aggregate and customer-specific monthly performance reports.
 - Aggregate reports would indicate whether any benchmark standards or parity standards have been missed for any class of customer (e.g., provisioning for unaffiliated IXCs is slower than for affiliated IXCs).
- If one or more metrics have been missed, the Commission, within 7 days, would automatically issue a notice of apparent liability ("NAL") and an order to show cause.
 - The NAL would identify each missed standard and each instance of discriminatory treatment both by class of customers and by circuit type.
 - The NAL also would propose a specific penalty for each missed standard.
 - The order to show cause would direct the incumbent LEC to demonstrate why: (a) the Commission should not find that the incumbent LEC has violated the Commission's rules and the statute; and (b) the incumbent LEC should not be required to come into compliance with the Commission's performance requirements within 30 days.
- The incumbent LEC would have 15 days to respond to the NAL, and customers would have 7 days to comment on the incumbent LEC's response.
- The incumbent LEC would bear the burden of demonstrating by clear and convincing evidence that its poor or unreasonably discriminatory performance was justified.
 - Absent a *force majeure* event shown to have *caused* the incumbent LEC to miss the benchmark standard or parity standard, the Commission would find that the incumbent LEC has violated the Commission's rules and the statute.
- Within 30 days of the incumbent LEC's response to the NAL, if the incumbent LEC has not been able to overcome the presumption of liability with clear and convincing evidence of justification, the Commission would issue an order finding that the incumbent LEC has violated the Commission's rules and the Communications Act, and that it must pay the prescribed forfeiture to the U.S. Treasury.

Tab 5

September 26, 2002

By Electronic Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Performance Measurements and Standards for
Interstate Special Access Services – CC Docket No. 01-321

Dear Ms. Dortch:

In previous *ex parte* filings submitted to the Federal Communications Commission (“Commission”), the Joint Competitive Industry Group (“JCIG”) has proposed a series of measurements, standards, reporting obligations, and enforcement mechanisms that would enhance the Commission’s ability to govern the provision of special access services by incumbent local exchange carriers (“LECs”). Subsequent to these submissions, the Bell Operating Companies (“BOCs”) submitted *ex parte* filings in which they claimed that JCIG’s proposals lacked evidentiary support and were legally flawed. In addition, on August 26, 2002, BellSouth and Time Warner Telecom (“TWTC”) submitted to the Commission a joint proposal specifying certain performance measurements and standards that would apply to the ordering, provisioning, maintenance, and repair of special access service.

As explained below, the performance measurements proposed by BellSouth are largely consistent with JCIG’s proposed measurements, providing conclusive proof that many of JCIG’s proposed measurements are generally acceptable to at least one Tier 1 LEC. As further explained below, it is clear that JCIG’s proposals – including its proposed measurements, standards, reporting requirements and remedies – are supported by ample record evidence and are fully consistent with the Act and the Commission’s rules and policies.

This *ex parte* submission addresses each of the BOCs’ arguments and provides additional support for JCIG’s positions. The document is organized as follows:

- Section I addresses measurements, and includes JCIG’s response to the measurements proposed by BellSouth and TWTC;

- Section II explains that standards must be reasonable and attainable but also provide customers with the performance they require;
- Section III discusses the need for reporting by Tier 1 incumbent LECs;
- Section IV addresses BOC arguments regarding JCIG's proposed enforcement mechanisms;
- Section V discusses the costs business customers incur as a result of the incumbent LECs' poor performance; and
- Attachment A provides a detailed explanation of JCIG's proposed performance standards.

I. JCIG's Measurements

The concerns raised by the BOCs about JCIG's proposed measurements are without merit. In fact, the vast majority of JCIG's measurements, including calculation methodologies, business rules, and exclusions, were expressly incorporated into the BellSouth/TWTC proposal.¹ The fact that one Tier 1 LEC has already accepted the vast majority of JCIG's measurements and business rules strongly indicates that there is no obstacle or sound rationale that would prevent the other incumbent LECs from doing so.

Moreover, several of the BellSouth/TWTC changes to the measurements that deviate from the JCIG proposal do so in ways that JCIG does not find objectionable. For these non-problematic changes to the JCIG measurements, which are summarized below, JCIG is willing to amend its original proposal to accept the measurements proposed by BellSouth:

Changes Proposed by BellSouth/TWTC that Are Acceptable to JCIG

General

- Define FOC as a response to a "clean" ASR. (JCIG original: ASR.)
- Base calculation of FOC Receipt-Distribution on ASR receive date. (JCIG original: ASR sent date.)
- Base all calculations on expected FOC confirm interval.² (JCIG original: FOC receipt interval.)

¹ Throughout this letter, JCIG uses the term "measurements" to refer to the following items: reporting dimensions, description, calculation methodology, business rules, exclusions, levels of disaggregation, and stated intervals.

² For this item, the BellSouth proposal is acceptable to JCIG, provided that the "FOC confirm interval" is defined to have the same meaning as the "FOC receipt interval."

SA-9 Failure Rate

- Change Levels of Disaggregation to: DS0, DS1, and DS3 & above. (JCIG original: DS0 + DS1; DS3 + OCn). *JCIG has no objection to disaggregating DS0 and DS1, but suggests that if this change is accepted, that DS3 and OCn also be disaggregated. The result would be that the same level of disaggregation exists for all measurements.*

SA-10 Mean Time to Restore

- Change Levels of Disaggregation to: DS0, DS1, DS3 & above. (JCIG original: DS0 + DS1; DS3 + OCn). [See note in SA-9.]
- Omit diagnostic regarding % Out of Service Greater than 24 hrs. (JCIG original: Include diagnostic regarding % Out of Service Greater than 24 hrs.)

SA-11 Repeat Trouble Rate

- Change Levels of Disaggregation to: DS0, DS1, DS3 & above. (JCIG original: DS0 + DS1; DS3 + OCn). [See note in SA-9.]
- Exclude informational tickets. (JCIG original: Informational tickets are already covered by the JCIG exclusion: "ILEC trouble reports associated with administrative tickets.")

For the remaining measurements where there is a disagreement between JCIG and BellSouth, JCIG believes there are compelling reasons for the Commission to adopt the measurement proposed by JCIG. These reasons are summarized in the following chart:

Changes Proposed by BellSouth/TWTC that Are Problematic

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
General			
Levels of Disaggregation	For measurements SA-1 through SA-8, OCn is disaggregated from DS3.	For measurements SA-1 through SA-8, OCn is aggregated with DS3 (TWTC can request raw data if needed for further breakout).	Aggregating DS3s with OCns can mask problems specific to the ordering and provisioning processes associated with DS3s experienced by competing carrier customers.
Reporting Dimensions	ILEC must provide standardized customer-specific reports as well as three types of standardized comparison reports: CLEC/IXC Carrier Aggregate, ILEC Affiliates Aggregate, and End User Aggregate. ³	BellSouth must provide only TWTC-specific reports to TWTC.	Without standardized reporting that reveals both industry-wide aggregate performance and customer-specific performance, neither customers nor the FCC will be able to identify the instances in which an ILEC engages in unjust or unreasonable or unreasonably discriminatory activity.

³ See, e.g., letter to Chairman Michael K. Powell, FCC, from JCIG (Feb. 12, 2002) (discussing the need for reporting requirements "applicable to the provision of all interstate special access services by Tier1/Class A incumbent LECs, including those services provided to the incumbent LECs' interexchange affiliates and retail customers."). (Except where otherwise noted, all comments and *ex parte* submissions cited herein were filed in CC Docket No. 01-321.)

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
SA-5 Days Late			
Business Rules	Projects included.	Projects excluded.	ILECs should be held responsible for meeting FOC Due Dates that they have provided (typically as the result of negotiations) for projects. BellSouth agreed to include projects for every other measurement; there is no reason to treat SA-5 differently.
	Does not require carrier customers to forecast facility requirements.	Includes rule requiring TWTC to "forecast facility requirements to MSA/CO level on a quarterly basis."	Forecasting requires carriers to provide their competitors (the ILECs) with competitively sensitive information. Moreover, in JCIG members' experience, even when carriers provide forecasting, ILECs still often claim a lack of facilities. This can provide an incentive for competing carrier customers to "overforecast," and the ILECs to complain about the overforecasts, rendering any such requirement meaningless. Inclusion of a forecasting requirement would, therefore, have no advantages with respect to measurement, and would have the disadvantage of requiring carriers to provide competitively sensitive information to competitors.

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
SA-6 Average Intervals – Requested/Offered/Installation			
Exclusions	Includes CNRs.	Excludes CNRs (installation interval only).	CNRs should not be excluded because this measurement is designed to capture the overall provisioning process without exclusions, consistent with Business Rule # 5 for SA-6, which states: “The Average Installation Interval includes all completions.”
SA-7 Past Due Circuits			
Business Rules	Does not require carrier customers to forecast facility requirements.	Requires TWTC “to forecast facility requirements to MSA/CO level on a quarterly basis.”	See SA-5, above.
SA-8 New Installation Failure Rate			
Exclusions	Includes repeat trouble reports.	Excludes repeat trouble reports.	Excluding repeat trouble reports would mean that multiple failures or troubles on the same newly installed circuit would not be captured. If a new circuit fails multiple times in the first thirty days, customers will be dissatisfied. Therefore this situation should be reflected in this measurement. Moreover, there are many instances when carrier customers have to send another trouble ticket within 30 days to fix a newly installed circuit that the

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
			ILEC claimed was fixed or on which a FOK/TOK or other code indicating working condition, was returned.
SA-11 Repeat Trouble Rate			
Business Rules		Include business rule: "TOK, FOK, and NTF not to exceed 10% of the total reports in any given rating period for total measured customer reports referenced in performance measures 8, 9, and 11 to be valid in any given month."	<p>It is not clear what issue this added rule is seeking to address. No breakout of FOK/TOK was added, and even if it were added, this business rule would impose a standard on the ordering carrier without explanation or justification. A breakout for FOK/TOK is included in JCIG SA-10 (MTTR), and was retained in the BellSouth/TWTC proposal as a diagnostic.</p> <p>If an ILEC is concerned about the numbers of TOK, FOK, and NTF it returns for any carrier, it should request a root cause analysis to determine the reason(s).</p>

As the foregoing discussion makes clear, there are only a handful of instances in which BellSouth has not already accepted measurements that are identical to or substantially in accord with JCIG's proposed measurements. The extent to which JCIG and BellSouth already agree strongly suggests that all Tier 1 LECs could readily track the vast majority of the measurements proposed by JCIG, and that such measurements do not – as Qwest, for instance, maintains – fail to “meet the needs of realism and the goals of the Commission.”⁴ To the contrary, BellSouth's acceptance of most measurements proves that they are eminently realistic and, at least in the eyes of one Tier 1 LEC, in accord with the goals of the Commission.

⁴ Letter to Marlene H. Dortch, FCC, from John W. Kure, Qwest, Attachment at 1 (Aug. 8, 2002) (“*Qwest ex parte*”).

II. JCIG's Standards

Some BOCs have claimed that the Commission lacks sufficient record basis for adopting performance standards for special access services. Any such concerns should be alleviated by the information provided in this letter, including Attachment A, which details the basis for each of the standards proposed by JCIG. Adoption of these standards is critical if the Commission is to fulfill its statutory duty to ensure the availability of adequate facilities at reasonable charges.⁵

There can be no doubt about the need for standards governing incumbent LEC provision of special access services. Incumbent LEC performance today is inadequate. Incumbent LECs frequently delay provisioning circuits, routinely miss due dates, and regularly contribute to circuit outages, many of which last too long. These problems impede customers' ability to use special access for local, long distance and advanced data services. As a result, the goals of the Communications Act are not being met. The Commission therefore should encourage incumbent LECs to improve their performance to a level that is both reasonable and attainable. The Commission should not allow the current level of unacceptable performance to continue. Nor should it allow those providers that are performing better than the others to backslide to the average.

The FCC can discern the level of performance that is reasonable and attainable in part by looking at what certain providers are able to achieve today. Where one incumbent LEC has demonstrated that it can sustain a high level of performance in an area, it provides powerful evidence that such a level of performance also is attainable by other incumbent LECs. The Commission often has used this so-called "best practices" approach to identify acceptable performance when benchmarking is necessary or desirable. For example, international settlement rates were set at benchmarks that reflected the "lowest, commercially viable, settlement rate paid by U.S. carriers to an overseas carrier from a competitive market."⁶ The Commission also has used "best practices" as a guide in determining technical feasibility.⁷ In addition, the conditions

⁵ See 47 U.S.C. § 151 (creating the Commission for the purpose of, among other things, making available "so far as possible, . . . a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges.")

⁶ *International Settlement Rates*, Report and Order, 12 FCC Rcd 19806, ¶ 133 (1997) (establishing a best practice rate); see also *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, Request for Waiver by Verizon Wireless*, Order, 16 FCC Rcd 18364, ¶ 29 (2001) (discussing the Commission's decision to require that carriers use a "best practice" approach in providing automatic location information ("ALI") to callers who do not have ALI-capable handsets).

⁷ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, ¶ 45 (1999) (one incumbent LEC's deployment of a particular type of collocation established a rebuttable presumption that it is technically feasible for other incumbent LECs to provide the same collocation arrangement).

adopted in the SBC-Ameritech and Bell Atlantic-GTE merger proceedings further the public interest by spreading the best practices from one in-region state to all of the in-region states.⁸ Best practices need not be the only guide the Commission follows to determine a reasonable standard, but they can assist in identifying sustainable performance in special access.

As demonstrated by the explanations provided in Attachment A to this letter, the special access service standards proposed by JCIG are reasonable and can be attained by Tier 1 incumbent LECs. The Commission therefore should adopt the proposed standards to facilitate both the Commission's and customers' ability to hold Tier 1 incumbent LECs accountable for their special access performance.

III. Need for Incumbent LEC Reporting

Contrary to the BOCs' assertions,⁹ the current lack of reporting lies at the heart of the problems associated with incumbent LEC special access provisioning. The absence of incumbent LEC performance data – for carriers, end user customers and regulators – has made it extremely difficult for both retail and wholesale special access purchasers to demonstrate the actual levels of the incumbents' poor performance and to identify discrimination. That problem has been significantly exacerbated by the shroud of confidentiality the incumbent LECs have imposed over the modest amount of information that has been made available to some special access purchasers.

Accordingly, regular reporting of incumbent LEC special access performance data using standardized measurements is essential to prevent incumbent LECs from engaging in unjust or unreasonable practices or discrimination in violation of sections 201 and 202 of the Act.¹⁰ First, reporting will reveal poor levels of performance for both retail and wholesale customers purchasing special access services from dominant incumbent LEC suppliers. Second, the availability of such data will reveal any variations in incumbent

⁸ *Ameritech Corp., Transferor and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 25, 63, 90, 95, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶ 111 (1999) (discussing the need for benchmarking as a tool to evaluate a carrier's performance); see also *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, ¶¶ 279, 354 (2000).

⁹ See Letter to Marlene H. Dortch, FCC, from Dee May, Verizon, Attachment at 1-4 (Aug. 16, 2002) ("*Verizon ex parte*"); *Qwest ex parte* at 1; Letter to Marlene H. Dortch, FCC, from SBC, Attachment A at 2 (Aug. 23, 2002) ("*SBC ex parte*").

¹⁰ See 47 U.S.C. §§ 201(b), 202(a).

LEC performance across various performance measures and geographic regions, and expose discrimination among customers with regard to the same measures within the same areas.¹¹ Third, these data are necessary to enable special access purchasers to pursue enforcement remedies before the Commission and in other forums. And fourth, JCIG members believe that incumbent LECs will not have sufficient incentives to improve their special access performance unless their performance data are publicly available.

In addition to identifying and preventing violations of sections 201 and 202, the reporting requirements proposed by JCIG also will provide essential data to allow the Commission to evaluate BOCs' compliance with the nondiscrimination provisions of section 272.¹² The BOCs' incentive and ability to discriminate against their carrier customers increase as the BOCs obtain authority under section 271 to provide in-region interLATA telecommunications services. Accordingly, one of the key requirements imposed on BOCs after they have obtained section 271 authority is the obligation to provide in-region interLATA telecommunications services through a separate affiliate and not to discriminate between that affiliate and any other entity in the provision of services and facilities or in the establishment of standards.¹³

The special access reporting requirements proposed by JCIG would assist the Commission in enforcing the nondiscrimination requirements of section 272 in two ways. First, the data provided pursuant to JCIG's proposed reporting requirements would greatly assist the Commission in detecting violations of this nondiscrimination requirement in a timely manner while the BOC offers long distance service through a separate affiliate.¹⁴ Second, the reported data also will likely prove extremely useful to

¹¹ What little data is publicly available indicate that the BOCs have been discriminating in favor of their own affiliates. For example, a recent audit revealed that SBC routinely returned FOCs to its affiliates within one day, while taking more than five days to return FOCs to unaffiliated carrier-customers for the same types of orders. See SBC Communications Inc., Report of Independent Accountants on Applying Agreed-Upon Procedures, Performance Measure Differences, Attachment A-7, Objective VIII, Procedure 3 at 2 (Dec. 17, 2001; filed in CC Docket No. 96-150 by Ernst & Young on Sept. 16, 2002) ("*SBC 272 Audit Report*"). The same audit also showed that SBC restored outages more expeditiously for its affiliates than for non-affiliated customers. *Id.* at 3.

¹² See, e.g., 47 U.S.C. § 272(e)(1).

¹³ 47 U.S.C. § 272(c)(1). The Act provides that the separate affiliate requirement sunsets in a particular state three years after the date the BOC is authorized to provide in-region interLATA services in that state, unless the Commission extends the three-year period. 47 U.S.C. § 272(f)(1).

¹⁴ Even if the separate affiliate requirement were lifted, the BOC would continue to have a statutory obligation to fulfill requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates. 47 U.S.C. § 272(e)(1).

the Commission in its efforts to consider whether the nondiscrimination requirements of section 272 can be addressed by a set of safeguards (including, but not limited to, special access provisioning requirements) that might replace the separate affiliate requirement.¹⁵

Thus, it is essential that the Commission immediately adopt uniform reporting measurements and require incumbent LECs to begin reporting on those measurements as soon as possible.

In sharp contrast, there is no need to impose similar obligations on non-dominant access service providers as suggested by the BOCs.¹⁶ The incumbent LECs' ability to perform poorly and discriminate in the provision of special access arises directly from their continued market power in special access services. Notably, the end-user customer members of JCIG have found that they are able to negotiate appropriate performance standards and remedies with non-dominant access providers. Moreover, there is no market-based reason to believe that non-dominant carriers could win business from end-user customers unless they offer performance levels that equal or exceed those of the incumbent LECs. Thus, imposition of performance standards and reporting requirements on the incumbents is sufficient to assure that other carriers' performance will be acceptable, and will equal or exceed that required by the performance standards.

IV. Enforcement Mechanisms

In an *ex parte* letter submitted to Chairman Powell on June 18, 2002, JCIG proposed three enforcement mechanisms that would enhance the Commission's ability to ensure that incumbent LECs provision special access services in a manner that complies with the Act: (1) service credits; (2) an expedited complaint process; and (3) a streamlined forfeiture process. On August 8 and August 16, respectively, Qwest and Verizon submitted *ex parte* filings in which they argued that all three proposals are legally defective. As explained below, Qwest's and Verizon's arguments are without merit.

A. Service Credits

Both Verizon and Qwest concede that section 205 of the Act¹⁷ provides the Commission with the authority to order modifications to federal tariffs when a carrier's practices are or will be in violation of the provisions of the Act.¹⁸ Verizon and Qwest argue, however, that this proceeding does not provide the evidence necessary to demonstrate that the incumbent LECs have violated the Act, and that the Commission

¹⁵ See Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002).

¹⁶ See, e.g., *Verizon ex parte*, Attachment at 4-5.

¹⁷ 47 U.S.C. § 205.

¹⁸ *Qwest ex parte*, Attachment at 2; *Verizon ex parte*, Attachment at 22.

therefore may not order relief under section 205. Verizon also contends that the Commission must investigate each incumbent LEC tariff individually to determine if a violation of the Act has occurred.

As explained below, Verizon's and Qwest's assertions are wrong, both as to the state of the record and as to the Commission's legal authority. Consequently, there is no basis for delaying long overdue corrective action, *e.g.*, through individualized Commission review and findings with respect to each of the major incumbent LECs' tariffs, as suggested by Verizon. This is especially true in this context, where uniform performance measures and standards are to be applied to all Tier 1 incumbent LECs.¹⁹

Verizon argues that, in the past, the Commission has ordered service credits only after investigating individual incumbent LEC tariffs.²⁰ However, there is no statutory provision requiring the Commission to undertake such an individualized review, and Verizon cites no authority to that effect. Indeed, the Commission has stated that

if we conclude that a tariff charge, classification, regulation, or practice is or will be unlawful, we may, within the broad limits of our discretion, select from a number of options to remedy the defects. We may, for example, prescribe reasonable provisions, Sec. 205(a), and Sec. 201(a), direct the carrier to file revisions correcting the unlawfulness, or take such other action not inconsistent with the Act as may be necessary to exercise our functions. We may institute broad policy changes while leaving fine-tuning for future proceedings.²¹

In fact, the special access provisioning proceeding is similar to the one underlying the Commission's 1992 collocation order, a case that Verizon has mischaracterized.²² There, the Commission conducted a general rulemaking proceeding, not a tariff investigation, and made a general finding that certain incumbent LEC collocation practices were unlawful. As a result, the Commission required all Tier 1 LECs to amend their affected tariffs.²³

Thus, it is clear that the Commission may exercise its section 205 authority to prescribe tariff or contract terms if it finds that a rate, classification, or practice is

¹⁹ See, *e.g.*, Reply Comments of WorldCom, Inc. at 16 (Feb. 12, 2002) ("WorldCom Reply").

²⁰ See *Verizon ex parte*, Attachment at 22.

²¹ *Investigation of Access and Divestiture Related Tariff*, Memorandum Opinion and Order, 97 F.C.C.2d 1082, ¶ 70 (1984) (internal citations omitted).

²² See *Verizon ex parte*, Attachment at 22-23, n.17 (citing *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1992)).

²³ See *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, ¶¶ 3, 223-25 (1992).

unlawful. The record in this proceeding provides ample basis for the Commission to make such a determination. Indeed, any fair-minded review of the evidence supports the conclusion that the incumbent LECs do not provide special access services to carriers or end users in a just, reasonable, and nondiscriminatory manner,²⁴ and the vast majority of commenters agree that the imposition of specific performance measures and standards (as proposed by the JCIG) is the best way to deter continued unlawfully anticompetitive behavior by the incumbent LECs.²⁵ Qwest's and Verizon's arguments to the contrary are unsupported by the vast record in this proceeding, and the Commission accordingly should emphatically reject their efforts to prolong the indefensible *status quo*.

Finally, Verizon's assertion that the Commission has previously refrained from implementing service quality standards when the record demonstrates that the market in question is competitive,²⁶ is inapplicable here, because the record clearly shows that special access service is not competitive. Indeed, as the record demonstrates, market discipline from the largest wholesale and retail customers has not provided incumbents with the necessary incentives to provide adequate performance. That is the very reason why service quality standards are needed to ensure that incumbent LECs provide special access services in a manner consistent with their statutory obligations.²⁷

B. Expedited Complaint Process

JCIG's proposed expedited complaint process is in accord with section 208 of the Act²⁸ and designed to compensate customers for damages they suffer without requiring them to incur extensive litigation costs. There is no merit to Verizon's asserted

²⁴ See, e.g., Comments of WorldCom, Inc. at 12-21 (Jan. 22, 2002) ("WorldCom Comments"); WorldCom Reply at 13 (citing the New York Public Service Commission's conclusion that Verizon appears to discriminate against its carrier customers); Comments of Cable and Wireless USA, Inc. at 8 (Jan. 22, 2002); Comments of AT&T Corp. at 2, 3 (Jan. 22, 2002).

²⁵ The Commission should reject Verizon's attempt to hide behind the claim that there are "no data from which the Commission could conclude that the ILECs' special access provisioning constitutes a violation of the Act." *Verizon ex parte*, Attachment at 24. After all, Verizon and its fellow BOCs have prevented the Commission from gathering all of the data demonstrating the incumbent LECs' deficient special access performance, while JCIG (along with several state commissions) has sought to ensure that the Commission has access to all relevant data.

²⁶ See *Verizon ex parte*, Attachment at 23 (citing *Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service and Proposed Amendments to Parts 21, 43 and 61 of the Commission's Rules*, 78 F.C.C.2d 1291, ¶ 6 (1980)).

²⁷ Verizon's argument that the service credits proposed by JCIG are unreasonable because the service levels are set at "unreasonably high levels" is addressed above in the discussion of JCIG's proposed measurements and standards.

²⁸ 47 U.S.C. § 208.

arguments that the expedited complaint process would somehow violate the Constitution or the Act. For instance, contrary to Verizon's assertion, JCIG's proposal to impose liability absent a *force majeure* event would not deny incumbent LECs "a fair opportunity to respond to allegations, as is required by the Constitution."²⁹ The enforcement process proposed here cannot be viewed in isolation. Rather, it must be viewed in context, along with the applicable measurements and standards. Taken as a whole, JCIG's proposal provides the incumbent LECs ample allowances for reasonable excuses for poor performance (e.g., verifiable customer-not-ready ("CNR") events).³⁰ And, despite the reasonableness of the proposed measurements, the vast majority of the standards under JCIG's plan do not require 100 percent performance.³¹ Thus, the measurements and standards themselves already provide allowances for the vast majority of circumstances, other than *force majeure* events, that could reasonably justify an incumbent LEC's failure to comply with a particular standard. The evidence in any enforcement proceeding would come from the incumbent LEC itself, avoiding any objection as to its veracity. In those rare circumstances in which an incumbent LEC's non-compliance can be justified by an event that does not involve a *force majeure* and that is not already reflected in the relevant measurement or standard, the incumbent would be free to provide evidence of the extenuating circumstances and seek a waiver of the *force majeure* limitation.

Verizon's statutory claims fare no better than its Constitutional argument. Verizon asserts that under the expedited process, purchasing carriers would not "bear[] the burden of demonstrating that the defendant's conduct violates the Act, as is required under Section 208."³² In fact, JCIG's proposal would require the customer to meet the initial burden of identifying a missed benchmark standard or parity standard. In adopting the relevant standards, the Commission will have already determined that failure to meet any such standard is *prima facie* evidence that the incumbent's conduct violates the Act (e.g., that failure to meet a particular performance standard constitutes an unjust or unreasonable practice). And as noted above, because evidence of the violation will come from data provided by the incumbent LEC itself, the incumbent LEC will not have any grounds for objecting to the veracity of the facts underlying the complaint.

Verizon also asserts that the expedited process would allow the injured party to collect "self-effectuating liquidated damages" in violation of the Act, and "regardless of

²⁹ *Verizon ex parte*, Attachment at 25.

³⁰ See, e.g., Letter to Chairman Michael K. Powell, FCC, from JCIG, Attachment A at 7, Measurement JIP-SA-4 (Jan. 22, 2002).

³¹ See, e.g., *id.* (requiring only 98% on-time performance even with verifiable CNR events taken into account). In addition, JCIG has proposed a sliding scale for penalties and damages. Thus, if the incumbent LEC misses the applicable benchmark or parity standard by a small amount, the remedy will be correspondingly small. A more substantial violation will be subject to a more substantial remedy.

³² *Verizon ex parte*, Attachment at 25.

whether or not the purchasing carrier actually suffered any harm.”³³ But Verizon ignores the fact that there is a difference between the *expedited* process proposed by JCIG and a *self-effectuating* one. The fact that damages may be more rapidly assessed under JCIG’s proposal does not mean that such damages are either “self-effectuating” or automatic.³⁴ Under JCIG’s proposal, a customer would either file a statement of damages based on its own calculations, or use a proxy schedule developed by the Commission. That proxy schedule presumably would reflect the Commission’s decision about the likely financial harm caused by an incumbent LEC’s failure to comply with specific rules. The Commission should recognize that there are trade-offs between precisely determining the amount of damages caused by misconduct and expeditiously determining that amount. In other contexts, the Commission has decided that the expeditious assessment of damages based on a proxy is preferable to a more time-consuming and costly case-by-case determination of damages.³⁵

Contrary to Verizon’s suggestion, the use of measurements would not allow the Commission to find an incumbent LEC liable in the absence of a violation of sections 201(b) or 202(a).³⁶ In fact, the very point of establishing measurements, standards, and reporting requirements is to put incumbent LECs on notice that non-compliance with such measures is *prima facie* evidence that an incumbent LEC has provisioned special access service in an unjust or unreasonable manner in contravention of section 201(b), or in an unreasonably discriminatory manner in violation of section 202(a). JCIG’s goal is not to rack up damage awards but to ensure satisfactory performance.

Qwest also objects to JCIG’s proposal that the Commission develop a proxy schedule for damages. Specifically, Qwest argues that the use of a Commission “proxy

³³ *Id.* at 26.

³⁴ Contrary to Verizon’s claims, there is far more than a “scintilla” of evidence that the current section 208 complaint process is inadequate to address the incumbent LECs’ ongoing special access performance problems. Compare *Verizon ex parte*, Attachment at 25, with, e.g., WorldCom Comments at 37 and WorldCom Reply at 17. JCIG’s proposal is not designed to supplant the existing section 208 complaint process, but to provide another expedited mechanism, similar to the Accelerated Docket process, that can be used for discrete categories of recurring problems, such as those that exist in regard to special access provisioning.

³⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, First Order on Reconsideration, 15 FCC Rcd 8158, ¶ 17 (2000) (finding that an “appropriate proxy” for an instance of slamming is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam).

³⁶ *Verizon ex parte*, Attachment at 26.

value” for damages would violate section 407 of the Act,³⁷ which requires “a complainant to prove damages under any circumstances.”³⁸

Qwest’s argument fundamentally misconstrues the relationship between JCIG’s proposal and section 407. The JCIG proposal sets forth an expedited complaint process that, like the existing “rocket docket” process,³⁹ is designed to be consistent with the section 208 requirements for complaints. JCIG’s proposal in no way implicates section 407, which sets forth the procedure by which a complainant may petition a court to *enforce* an FCC order for payment of damages that was issued as the result of the complainant’s section 208 complaint. Section 407 does not even come into play unless a party refuses to comply with an FCC order (issued as a result of a section 208 complaint) directing it to pay damages.⁴⁰ In the context of JCIG’s proposal, therefore, section 407 would come into play only *after* the entire section 208 expedited complaint process had run its course, culminating in a Commission order awarding damages against an incumbent LEC that subsequently refused to pay those damages.

Despite the clear irrelevance of section 407 to the pre-enforcement complaint process proposed by JCIG, Qwest argues that JCIG’s proposal would violate section 407 because it would “trump” or “alleviate” the “need to prove both liability and damages in court” without affording the carrier “due process.”⁴¹ This argument is clearly without merit. JCIG’s proposal would not diminish or alter any requirement of section 407, including the requirement that a complainant seeking enforcement of an FCC order for damages must file a petition in an appropriate district or state court.⁴²

Nor would adoption of JCIG’s proposal abridge the due process rights of any incumbent LEC. For instance, incumbents will have had the opportunity to participate in (and in fact will have participated in) the proceeding establishing the applicable measurements, standards, reporting requirements and remedies. Likewise, any FCC order finding a violation would be based on information provided by the incumbent LEC itself. Even after an initial determination is made that a violation of the Act and/or the Commission’s rules had occurred, the incumbent LEC would have a fair opportunity to

³⁷ 47 U.S.C. § 407.

³⁸ *Qwest ex parte*, Attachment at 2.

³⁹ See 47 C.F.R. § 1.730 (setting forth rules for the Enforcement Bureau’s accelerated docket).

⁴⁰ By its own terms, section 407 can be triggered only “[i]f a carrier does not comply with an order for the payment of money within the time limit in such an order.” 47 U.S.C. § 407.

⁴¹ *Qwest ex parte*, Attachment at 2.

⁴² JCIG’s proposal also would not alter section 407’s requirement that, once such a petition is filed, the suit must “proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated.” 47 U.S.C. § 407.

rebut the evidence or justify its conduct. If an incumbent LEC were found liable, it still would have an opportunity to comment on the customer's statement of damages. Finally, an incumbent LEC that has refused to pay damages assessed as a result of JCIG's proposed expedited process would retain all of the due process rights it currently enjoys under section 407. Thus, Qwest's arguments are simply wrong.

C. Streamlined Forfeiture Process

JCIG's proposed streamlined forfeiture process is fully in accord with the forfeiture requirements of section 503 of the Act,⁴³ which authorizes the Commission to penalize carriers for violations of the Communications Act. Given the incumbent LECs' poor performance, adoption of the JCIG proposal is necessary if the Commission is to enhance the incumbents' incentives to provision special access in a reasonable and non-discriminatory manner. As explained below, JCIG's proposal suffers from none of the defects alleged by Verizon or Qwest.

In particular, JCIG's proposal would not "gut the critical procedural protections of Section 503" in any of the ways identified by Verizon.⁴⁴ First, JCIG's proposal would not "automatically" equate an incumbent LEC's failure to meet a performance measurement with a violation of the Act or a Commission rule.⁴⁵ Instead, the proposal would merely establish a rebuttable presumption of such a violation.

Second, Verizon incorrectly assumes that under JCIG's proposal the Commission would issue NALs that "merely note that a carrier failed to satisfy metric X or sub-metric Y" without "explain[ing] why that failure constitutes unjust, unreasonable, or unreasonably discriminatory service."⁴⁶ JCIG's proposal contemplates that the Commission would include in each NAL language explaining that there is an apparent failure to satisfy a particular benchmark standard or parity standard, and that the Commission has already concluded (*i.e.*, in the rulemaking that would implement JCIG's proposal) that such failure creates a presumption of unjust, unreasonable, or unreasonably discriminatory service.

Third, JCIG does not dispute that the Commission must make an initial showing that an incumbent LEC is liable for provisioning special access service in an unjust, unreasonable, or unreasonably discriminatory manner before it can issue a forfeiture order.⁴⁷ However, the Commission can satisfy this initial obligation by relying on the incumbent LEC's *own documentation* to demonstrate that the LEC has missed a standard unless the incumbent LEC can justify its presumptively unjust, unreasonable, or

⁴³ 47 U.S.C. § 503.

⁴⁴ *Verizon ex parte*, Attachment at 28.

⁴⁵ *Id.* at 28-29.

⁴⁶ *Id.* at 29.

⁴⁷ *See id.*

unreasonably discriminatory conduct (e.g., by producing evidence of a *force majeure* event). Regardless of whether the Commission accepts JCIG's suggestion that the latter justification should be based on clear and convincing evidence, JCIG urges the Commission to recognize that the efficacy of the streamlined forfeiture process depends on the Commission's strict enforcement of the relevant standards. As explained above, any measurements the Commission adopts will already grant the incumbent LECs reasonable opportunity to account for various valid excuses (e.g., verifiable CNR events). Therefore, the Commission should insist that an incumbent LEC's justification for failing to meet an applicable standard be compelling enough to overcome the presumption that the incumbent LEC has provisioned special access service in an unjust, unreasonable, or unreasonably discriminatory manner.

Qwest also misinterprets JCIG's proposed streamlined forfeiture process. Specifically, Qwest claims that the proposal would "cut off [the] fundamental right" of incumbent LECs to "refus[e] to pay the specified [forfeiture] amount and defend[] a subsequent lawsuit by the United States."⁴⁸

This objection also implicates a section of the Act that has nothing to do with JCIG's proposal. JCIG seeks to establish a streamlined forfeiture process that would be governed by section 503 of the Act, which sets forth the procedures by which the Commission may assess a forfeiture.⁴⁹ JCIG's proposal merely streamlines the section 503 process for issuing an NAL and forfeiture order against incumbent LECs that have failed to provision special access in a just, reasonable and reasonably nondiscriminatory manner. JCIG's proposal does not affect a carrier's right to refuse to pay a forfeiture and defend itself in a subsequent lawsuit, pursuant to section 504 of the Act.⁵⁰

V. Business Customers Incur Substantial Costs as a Result of Untimely and Unpredictable Provisioning of Incumbent LEC Special Access Services

The provisioning of special access services by incumbent LECs is the most problematic and unpredictable component of service cutovers – *i.e.*, the migration of services from one carrier to another. As explained below, this migration is especially costly for the vast majority of large and medium-sized businesses that operate multiple locations throughout the nation.

With a few exceptions, special access services utilized by business customers are purchased through interexchange carriers as part of end-to-end services. Many businesses pay hundreds of thousands of dollars per month, or even well over one million dollars per month, for corporate data communications services, including interexchange and special access components. The costs of untimely and unpredictable provisioning of

⁴⁸ Qwest *ex parte*, Attachment at 3.

⁴⁹ 47 U.S.C. § 503.

⁵⁰ 47 U.S.C. § 504(a).

special access services are substantial and immediate,⁵¹ and involve both direct and indirect costs.

Direct costs include those attributable to: (1) unrealized cost savings due to the delay in migrating to the new carrier's services; and (2) the period during which the customer is required to utilize (and pay for) the end-to-end services of its current carrier and the special access services supporting the new carrier's services.

A service cutover often involves the migration to lower cost services of the new carrier as well as improved functionality and operational efficiency and, sometimes, better account support. Delayed provisioning of special access services requires the customer to retain the (often higher cost) services of the current carrier for longer than if the migration were completed in a reasonable period of time. As a result of this delay, the customer loses the cost savings and other benefits that it otherwise would have realized.

Untimely or unpredictable special access service provisioning can substantially increase the cost of service cutovers. Business customers are confronted with a Hobson's choice. They can delay the cutover of those locations related to the sites subject to the provisioning delays (or for which provisioning intervals are not provided) and thereby risk extending the duration of the overall process (and delay realization of the cost savings and other benefits associated with the new carrier's services).⁵² Alternatively, the customer can direct the new carrier to authorize the serving LECs to provision the special access services at the related locations that (eventually) will support the new carrier's end-to-end services.⁵³ If it chooses the latter option, the customer must begin to pay for the special access services immediately even though the customer's traffic remains on the current carrier's network. Under either option, the customer continues to use (and pay for) the current carrier's services at the related locations *until* the new carrier's services (both the interexchange and incumbent LEC-provided access components) are available at all related locations.⁵⁴

⁵¹ The demand for special access services is expected to continue growing as the demand for data communications continues to grow. More locations within an organization will require special access services as bandwidth-intensive applications intended to enhance productivity continue to be rolled out. The growth in incumbent LEC special access services corroborates this trend.

⁵² "Related" locations are those within the same business unit that regularly communicate with each other. If critical corporate-wide locations are subject to provisioning delays, the entire service cutover can be affected. The problem is compounded by the fact that DS-3 access service is increasingly required at these critical locations.

⁵³ Provisioning issues at major locations can extend service cutover schedules even further.

⁵⁴ Most corporations do provide for brief periods of concurrent operation of the services of the incumbent carrier and the new IXC to test the latter's services. The delays

Special access provisioning problems can have a substantial domino effect on the time and cost of service cutovers for business customers, especially those with multiple locations. Frame relay and ATM, IP-enabled frame relay and ATM and IP-VPN services provide varying degrees of "virtual connectivity." Typically, the current carrier's services are retained until all or a preponderance of a company's related locations are cut over to the new carrier's services. This is necessary in order to validate that the new carrier's services (the customer's "new network") operate according to the customer's network design. Until all the related locations are connected to the new network, the functionality and reliability of the new network cannot be validated properly. Unless and until the new network is validated, the current carrier's services are retained so that the customer's ongoing communications requirements continue to be met.⁵⁵

Delayed and unpredictable provisioning of incumbent LEC special access services also imposes substantial indirect costs on customers. Such indirect costs include the costs associated with: (1) delay in deploying network-based business applications intended to enhance business efficiency, maximize competitive advantage, or reduce costs; (2) delay in maximizing the availability of corporate services and access to information at all locations; (3) deferring e-commerce business solutions with business partners, suppliers and customers; and (4) continued allocation of limited internal resources to support a delayed carrier migration. These costs vary from customer to customer, and can easily exceed the monthly direct costs.

identified herein are in addition to these planned, limited periods of dual carrier operations.

⁵⁵ For private line services, the migration process is less cumbersome. Where special access services are provisioned to the two locations served by a private line, the customer can test the new end-to-end service and disconnect the service of the original carrier as soon as the new carrier's service is up and running. Compared to other interexchange and IP services utilized for data communications, growth in demand for private line service is modest, at best. As the migration to data communications services based on virtual connectivity grows, the special access provisioning delays become increasingly problematic.

VI. Conclusion

For all of the foregoing reasons, the Commission should adopt the measurements and standards, reporting obligations, and enforcements mechanisms proposed by JCIG, subject only to the modifications mentioned in section I, above.

Respectfully submitted,

The Joint Competitive Industry Group

C. Douglas Jarrett
Keller and Heckman LLP
American Petroleum Institute

Brian Moir
Moir & Hardman
**eCommerce & Telecommunications Users
Group (eTUG)**

John Windhausen, Jr., President
**Association for Local Telecommunications
Services**

Richard J. Metzger
Vice President – Regulatory and Public Policy
Focal Communications Corporation

Robert W. Quinn, Jr.
Federal Government Affairs Vice President
AT&T Corp.

Donna Sorgi
Vice President, Federal Advocacy
Law and Public Policy
WorldCom, Inc.

Audrey Wright
Director, Domestic Regulatory Affairs
Cable & Wireless

R. Gerard Salemmme
Senior Vice President, External Affairs
XO Communications, Inc

H. Russell Frisby, Jr., President
**Competitive Telecommunications
Association**

cc: William F. Maher
Michelle Carey
John P. Stanley
Uzoma Onyeije
Renee Crittendon
Jeffrey Carlisle

JOINT COMPETITIVE INDUSTRY GROUP

**PERFORMANCE MEASUREMENTS &
STANDARDS**

FOR ILEC SPECIAL ACCESS SERVICE

**EXPLANATION OF JCIG PERFORMANCE
STANDARDS**

Submitted: September 26, 2002

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ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-1 FOC Receipt

Description

The Firm Order Confirmation (FOC) is the ILEC response to an Access Service Request (ASR), whether an initial or supplement ASR, which provides the CLEC or IXC Carrier with the specific Due Date on which the requested circuit or circuits will be installed. The expectation is that the ILEC will conduct a minimum of an electronic facilities check to ensure due dates delivered in FOCs can be relied upon. The performance standard for FOCs received within the standard interval is expressed as a percentage of the total FOCs received during the reporting period. A diagnostic distribution is required along with a count of ASRs withdrawn at the ILEC's request due to a lack of ILEC facilities or otherwise.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent FOCs Received within Standard	- DS0 => 98.0% within 2 business days
	- DS1 => 98.0% within 2 business days
	- DS3 => 98.0% within 5 business days
	- OCn - ICB (Individual Case Basis)
FOC Receipt Distribution	- Diagnostic
ASRs Withdrawn at ILEC Request Due to a Lack of ILEC Facilities or Otherwise	- Diagnostic

Basis for JCIG Standard

The timely receipt of FOCs is required to allow carriers purchasing special access services to communicate due dates and coordinate installation with their end users. The carrier must be able to depend on the FOC due date as an accurate installation date, so it is imperative that the ILEC conducts a facilities check prior to issuing the FOC. Thus, to ensure that the ILEC conducts the facilities check prior to issuing the FOC, JIP-SA-1 provides a longer time frame in which the ILEC must return the FOC than some comparable standards (such as those for UNEs). For example, in the UNE context, Tennessee requires ILECs to return FOCs within 1 hour if the order is processed on a fully mechanized basis. Other states similarly require FOC returns within a matter of a few hours when electronic orders are submitted. *See, e.g., NY-Verizon Carrier to Carrier Standards and Metrics, OR-1 (2 hours for POTS/Pre-Qualified Complex flow-through orders).* Even for orders requiring some degree of manual processing, a standard of 48 hours or less is common. *See, e.g., TN-O-91 – Firm Order Confirmation Timeliness (48 hours for interconnection trunks).* Because the ASR process is largely mechanized, similar response times could be achieved in the special access context.

A time limit of two business days for DS0 and DS1 circuits and five business days for DS3 circuits is reasonable because it provides an ILEC with a sufficient amount of time in which to conduct the facilities check. In many instances, the ILEC can verify electronically that sufficient facilities exist. For example, in its August 16, 2002, *ex parte*, Verizon confirms that the facilities check process "is now being automated." (*Verizon ex parte* at 9, n.10). SBC also has stated that it conducts electronic facilities checks. Qwest states that it already returns FOCs within 72 hours. With electronic facilities checks, an ILEC should be able to return a reliable FOC within the 2 day/5 day standards proposed.

Finally, recently released SBC audit data demonstrate that, on average, SBC returned FOCs for both DS1s and DS3s to its 272 affiliate within one day. *See SBC 272 Audit Report, Performance Measure Differences, Attachment A-7, Objective VIII, Procedure 3 at 2 (filed in CC Docket No. 96-150 on Sept. 16, 2002).* The SBC audit data does not

ILEC Performance Measurements and Standards

disclose whether SBC conducts a facilities check prior to issuing FOCs. If SBC conducted a facilities check prior to issuing the FOCs that formed the basis of the audit data, then such data demonstrate that ILECs have provided – and can provide – FOCs in shorter timeframes than stated in the JCIG proposal, and thus, that the JCIG proposal is attainable. Non-discrimination requirements obligate SBC to provide at least this same level of performance for non-affiliates.

If SBC did not conduct a facilities check prior to issuing the FOCs, such data indicates that SBC has returned FOCs in one-half of the time – without a facilities check – proposed by JCIG. Therefore, the additional time (beyond what SBC has reported) provided in the JCIG metric (one day for DS0s and DS1s and 4 days for DS3s), should be sufficient for SBC and other Tier 1 LECs to conduct the facilities check prior to issuing a FOC.

ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-2 FOC Receipt Past Due

Description

The FOC Receipt Past Due measure tracks all ASR requests that have not received a FOC from the ILEC within the expected FOC receipt interval, as of the last day of the reporting period, and do not have an open, or outstanding, Query/Reject. This measure gauges the magnitude of late FOCs and is essential to ensure that FOCs are being received in a timely manner from the ILECs. A distribution of these late FOCs, along with a report of those late FOCs that do have an open Query/Reject, is required for diagnostic purposes.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent FOC Receipt Past Due – Without Open Query/Reject	< 2.0 % FOC Receipt Past Due
FOC Receipt Past Due – Without Open Query/Reject - Distribution	- Diagnostic
Percent FOC Receipt Past Due – With Open Query/Reject	- Diagnostic

Basis for JCIG Standard

The purpose of this metric is to provide information about FOCs that are past due. The Percent FOC Receipt Past Due without open query/reject measurement is the inverse of the standard set forth in JIP-SA-1. If ILECs return 98% or more of the FOCs within the specified time period, then fewer than 2% of the FOCs should be received late. Therefore, the rationale for the performance standard in JIP-SA-1 also applies to this metric.

The diagnostic measures provide information on the magnitude of late orders (whether orders are 2 days late, 5 days late, etc.).

ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-3 Offered Versus Requested Due Date

Description

The Offered Versus Requested Due Date measure reflects the degree to which the ILEC is committing to install service on the CLEC or IXC Carrier Requested Due Date (CRDD), when a Due Date Request is equal to or greater than the ILEC stated interval. A distribution of the delta, the difference between the CRDD and the Offered Date, for these FOCs is required for diagnostic purposes.

Performance Standard

Percent Offered with CRDD (where CRDD = > ILEC Stated Interval) = 100%

Offered versus Requested Interval Delta – Distribution - Diagnostic

ILEC Stated Intervals: To be determined by ILEC

Basis for JCIG Standard

Percent Offered with CRDD

JIP-SA-3 examines orders where the CRDD is equal to or greater than the ILEC's stated standard interval. In these situations, the ILEC always should return a FOC for the requested date. Indeed, Verizon, SBC, and Qwest all state that this is their policy. See *Verizon ex parte* (Aug. 16, 2002); *SBC ex parte* (Aug. 23, 2002); *Qwest ex parte*, Attachment at 3 (Aug. 8, 2002). The JCIG standard merely holds these ILECs to their policy.

A 100% standard is proposed in recognition of the critical role that certainty and dependability play in the special access process. Carriers often are required to submit bids to end users with specific installation dates or specific installation windows. Moreover, in many cases, SLAs with an end user will include penalties if circuits are not provisioned by a specific date. Carriers must be able to rely on the ILEC's stated interval to satisfy these end user demands. JIP-SA-3's standard provides carriers with the assurances necessary to make these commitments.

Standard Interval

The diagnostic examines the delta between the offered and requested dates. JCIG proposes that the offered interval should be no longer than the least of: the standard interval (as described below); the ILEC stated interval; or the interval actually provided to the ILEC's affiliates or retail customers in that state.

JCIG proposes that the standard intervals for provisioning be 7 days for DS0s, 7 days for DS1s, and 14 days for DS3s. As illustrated herein, the proposed standard is based on an average of the ILECs' own posted installation intervals. In each case, at least one ILEC offers a stated interval that is shorter than the interval established under the proposed standard.

	Low	High	Average
DS0	5	12	7
DS1	5	9	7
DS3	7	20	13

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-4 On Time Performance To FOC Due Date

Description

On Time Performance To FOC Due Date measures the percentage of circuits that are completed on the FOC Due Date, as recorded from the FOC received in response to the last ASR sent. Customer Not Ready (CNR) situations may result in an installation delay. The On Time Performance To FOC Due Date is calculated both with CNR consideration, *i.e.*, measuring the percentage of time the service is installed on the FOC due date while counting CNR coded orders as an appointment met, and without CNR consideration.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent On Time to FOC Due Date - With CNR Consideration = > 98.0% On Time
Percent On Time to FOC Due Date - Without CNR Consideration - Diagnostic

Basis for JCIG Proposal

This JCIG standard follows from the proposition that if an ILEC establishes the promised date (especially if it does so after conducting a facilities check), then it should meet – and be held to – that date. In many instances, the customer must have other vendors on site (to install new equipment, make other changes, etc.) at the same time as the ILEC vendor to ensure a seamless installation. Therefore, the customer must be able to rely on the FOC date such that it can coordinate the installation activities of all of its vendors.

The FOC operates as a date certain on the customer side. That is, the ILEC expects the customer to be ready for the installation on the ILEC-established date, and the ILEC imposes penalties on the customer (whether a carrier or the ILEC end user) if it is not ready to receive services on the FOC date. ILECs must similarly be held accountable, particularly since it is the ILEC that establishes the due date.

As explained above (*see* JIP-SA-1), the ILEC is to return the FOC only after it has conducted a facilities check. Thus, carriers expect the FOC date to be a “real” date, and not merely an estimated date. The only exceptions to the FOC date being a real date should be circumstances beyond an ILEC’s own control. These would be rare occurrences, and the 2% margin allows sufficient leeway for unexpected circumstances.

In our experience, ILECs frequently provide FOCs without having conducted a reliable facilities check. In other situations, ILECs postpone conducting work necessary for the installation to occur on the FOC date until too late in the process, thus leading to missed orders. ILECs will not have any incentive to correct these deficiencies absent a rigorous standard for On Time Performance.

The JCIG Standard would improve current ILEC performance, and is attainable. In the 2001 ARMIS data, at least two ILECs reported On Time Performance of greater than or equal to 96%. Since 1998, every Tier 1 ILEC has reported an On Time Performance above 90% and 4 of the 6 have reported at least one year in which they exceeded 95%.

Further, in some instances the ILECs have agreed to performance standards approximating the JCIG standard. SWBT’s “MVP Tariff” commits to provide On Time Performance of up to 97.7% for DS0s and 96.7% in DS1s. *See* SWBT FCC Tariff No. 73, § 38.3.

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-5 Days Late

Description

Days Late captures the magnitude of the delay, both in average and distribution, for those circuits not completed on the FOC Due Date, and the delay was not a result of a verifiable CNR situation. A breakdown of delay days caused by a lack of ILEC facilities is required for diagnostic purposes.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Average Days Late	< 3.0 Days
Days Late Distribution	- Diagnostic
Average Days Late Due to a Lack of ILEC Facilities	- Diagnostic

BellSouth/Time Warner Proposal

Average Days Late	< 5.0 days for year 1, 3 days for year 2.
-------------------	--

Basis for JCIG Proposal

Similar to JIP-SA-4, the purpose of this standard is to enable carriers to rely on the ILEC-provided FOC. The ILEC should not miss the FOC date absent circumstances beyond its control. If the ILEC misses the FOC date, however, then it should complete the circuit promptly.

JCIG believes an average of three days for missed circuits is reasonable and attainable. The New York Commission has established three days as the appropriate standard. Further, three days is the standard that BellSouth commits to meet after the first year under the BellSouth/Time Warner proposal. All Tier 1 LECs should be expected to meet this standard.

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-6 Average Intervals - Requested/Offered/Installation

Description

The intent of this measure is to capture three important aspects of the provisioning process and display them in relation to each other. The Average CLEC or IXC Carrier Requested Interval, the Average ILEC Offered Interval, and the Average Installation Interval, provide a comprehensive view of provisioning, with the ultimate goal of having these three intervals equivalent.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Average Requested Interval	- Diagnostic
Average Offered Interval	- Diagnostic
Average Installation Interval	- Diagnostic

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-7 Past Due Circuits

Description

The Past Due Circuits measure provides a snapshot view of circuits not completed as of the end of the reporting period. The count is taken from those circuits that have received an FOC Due Date but the date has passed. Results are separated into those held for ILEC reasons and those held for CLEC or IXC Carrier reasons (CNRs), with a breakdown, for diagnostic purposes, of Past Due Circuits due to a lack of ILEC facilities. A diagnostic measure, Percent Cancellations After FOC Due Date, is included to show a percent of all cancellations processed during the reporting period where the cancellation took place after the FOC Due Date had passed

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent Past Due Circuits - Total ILEC Reasons	< 3.0 % > 5 days beyond FOC Due Date
Percent Past Due Circuits - Due to Lack of ILEC Facilities	- Diagnostic
Percent Past Due Circuits - Total CLEC Reasons	- Diagnostic
Past Due Circuits Distribution	- Diagnostic
Percent Cancellation After FOC Due Date	- Diagnostic

BellSouth/Time Warner Proposal

Percent Past Due Circuits – Total BellSouth Reasons	< 3.0 % > 5 days beyond FOC Due Date.
---	---------------------------------------

Basis for JCIG Proposal

JIP-SA-7 provides a snapshot of pending circuits. There is no basis for more than a small percentage of the circuits (if that) to be significantly late. The 3.0% standard is reasonable and attainable. BellSouth, for example, already has agreed to this identical standard in its agreement with Time Warner. Moreover, if an ILEC meets the standard in JIP-SA-5 (i.e., has a monthly average of 3 days late or less), only a small percentage of orders should be 5 days or more late at any given time. Allowing for a 3% leeway in this snapshot recognizes the occasional circumstances beyond an ILEC's control that prevent the ILEC from satisfying the FOC date. Any percentage greater than 3% signifies the likely existence of problems within the ILEC's control.

ILEC Performance Measurements and Standards

PROVISIONING

Measurement: JIP-SA-8 New Installation Trouble Report Rate

Description

New Installation Trouble Report Rate measures the quality of the installation work by capturing the rate of trouble reports on new circuits within 30 calendar days of the installation.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

New Installation Trouble Report Rate ≤ 1.0 trouble reports per 100 circuits installed

Basis for JCIG Proposal

As a result of the network troubles sought to be measured herein, end user customers encounter significant service delays.

Absent this measurement, ILECs will not have a sufficient incentive to ensure that the circuits that they provision are provisioned correctly and are not subject to any underlying problems. If an ILEC is held only, for example, to an On Time Performance standard, it will have an incentive to install the circuit on time, so as to satisfy the FOC date, even if it knows that there is a problem with the circuit (facility or otherwise) such that the circuit likely will fail within a short period of time. This measurement will promote integrity in the installation process.

This measurement is reasonable and attainable. Some ILECs already record this data and provide it to their carrier customers.

ILEC Performance Measurements and Standards

MAINTENANCE & REPAIR

Measurement: JIP-SA-9 Failure Rate

Description

Failure Rate measures the overall quality of the circuits being provided by the ILEC and is calculated by dividing the number of troubles resolved during the reporting period by the total number of "in service" circuits, at the end of the reporting period, and is then annualized by multiplying by 12 months.

Performance Standard

Failure Rate Annualized	- Below DS3	<= 10.0%
	- DS3 and Above	<= 10.0%

Basis for JCIG Proposal

Capturing the overall failure rate is necessary to assess the ILEC's overall performance, and to avoid the installation of circuits that are fraught with troubles and likely to fail.

The proposal recognizes that some circuit failure is beyond the ILEC's control. Any failure greater than 10% (on an annualized basis) signals problems within the ILEC's control. In fact, ILECs already recognize that this metric is attainable; as one example, SWBT's FCC Tariff No. 73 provides for a failure rate as low as 10.6% (annualized) for DS1s. See SWBT FCC Tariff No. 73, § 38.3. There is no basis for other Tier 1 ILECs not to achieve a similar annualized percentage (10%).

ILEC Performance Measurements and Standards

MAINTENANCE & REPAIR

Measurement: JIP-SA-10 Mean Time to Restore

Description

The Mean Time To Restore interval measures the promptness in restoring circuits to normal operating levels when a problem or trouble is referred to the ILEC. Calculation is the elapsed time from the CLEC or IXC Carrier submission of a trouble report to the ILEC to the time the ILEC closes the trouble, less any Customer Hold Time or Delayed Maintenance Time due to valid customer, CLEC, or IXC Carrier caused delays. A breakdown of the percent of troubles outstanding greater than 24 hours, and the Mean Time to Restore of those troubles recorded as Found OK / Test OK, is required for diagnostic purposes.

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standard

Mean Time to Restore	- Below DS3	<= 2.0 Hours
	- DS3 and Above	<= 1.0 Hour
% Out of Service > 24 Hrs		- Diagnostic
Mean Time to Restore – Found OK / Test OK		- Diagnostic

Basis for JCIG Proposal

Customers rely on telecommunications networks to be up and running 24 hours per day/7 days per week. Customers have a right to expect that the networks will be repaired promptly. A circuit offering “four nines” of reliability (*i.e.*, the circuit is available 99.99% of the time) would be down less than one hour over the course of an entire year. Therefore, the proposed standard reflects the goal of providing a “four nines” of reliability in special access.

ILECs already track and record maintenance and repair statistics in several forums. For example, several ILECs already report this data to their carrier customers. ILECs also track this data for purposes of the 272 reports, and in accordance with certain state requirements.

Data from the SBC 272 audit report demonstrate that SBC restored over 50% of the circuits of its affiliates within one hour of circuit failure. *See SBC 272 Audit Report*, Performance Measure Differences, Attachment A-7, Objective VIII, Procedure 3 at 3. Although the data does not illustrate the mean time to restore, it does demonstrate that SBC restored over half of the circuits (to their affiliates) promptly, and thus, that SBC – and other ILECs – are capable of restoring circuits to their carrier customers in significantly shorter time frames than they currently provide.

ILEC Performance Measurements and Standards

MAINTENANCE & REPAIR

Measurement: JIP-SA-11 Repeat Trouble Report Rate

Description

The Repeat Trouble Report Rate measures the percent of maintenance troubles resolved during the current reporting period that had at least one prior trouble ticket any time in the preceding 30 calendar days from the creation date of the current trouble report.

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standards

Repeat Trouble Report Rate	- Below DS3	<= 6.0%
	- DS3 and Above	<= 3.0%

Basis for JCIG Proposal

Repeat troubles often signify a latent weakness in the network. The repeat trouble report rate must be tracked so that ILECs can do the work necessary to fix the problems. This standard reflects a goal of providing a reliable special access network.

Some ILECs, such as Qwest, already measure repeat trouble trends. (*Qwest ex parte*, Aug. 8, 2002.) Additionally, ILECs already report repeat data to carrier customers. The data reported to JCIG members indicate that ILECs can obtain repeat trouble report rates that are significantly lower than those proposed by BellSouth/Time Warner.

Tab 6

LAWLER, METZGER & MILKMAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

GIL M. STROBEL
PHONE (202) 777-7728

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

September 16, 2003

BY ELECTRONIC DELIVERY

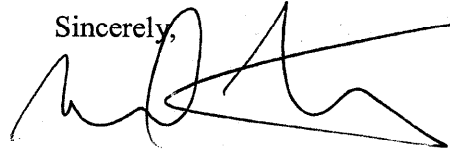
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

Pursuant to the Commission's rules, the attached letter from the Joint Competitive Industry Group (JCIG) to David Solomon, Chief of the FCC's Enforcement Bureau, is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,



Gil M. Strobel

Attachment

cc: Hugh L. Boyle
Michael Carowitz
Trent Harkrader
Carol Matthey
Brent Olson
Mark Stephens

Michelle Carey
Anthony J. Dale
William A. Kehoe III
John B. Muleta
Uzoma Onyeije
Henry Thaggert

Jeffrey Carlisle
Maureen F. Del Duca
William Maher
Thomas Navin
Alexander Starr
Peter Young

September 16, 2003

BY ELECTRONIC FILING

David Solomon
Chief, Bureau of Enforcement
Federal Communications Commission
445 Twelfth Street, S.W. - Room 7-C723
Washington, D.C. 20554

Re: In the Matter of Performance Measurements and Standards for
Interstate Special Access Services, CC Docket No. 01-321

Dear Mr. Solomon:

In previous filings submitted to the FCC, the Joint Competitive Industry Group (JCIG) proposed a streamlined process for imposing forfeitures on Tier 1 incumbent local exchange carriers (LECs) that have failed to provision special access in a reasonable and nondiscriminatory manner. In this submission, JCIG explains in greater detail how this streamlined process would work. In particular, JCIG provides more information regarding: (i) the means by which an incumbent LEC's special access customers could comment on an incumbent LEC's monthly performance report or response to a Notice of Apparent Liability (NAL), and (ii) the means by which the Enforcement Bureau should address requests for confidential treatment in special access-related forfeiture proceedings. In addition, JCIG urges the FCC to delegate to the Enforcement Bureau the FCC's full authority to assess forfeitures against incumbent LECs found to have violated either a benchmark or parity standard with respect to special access services. As explained below, such a delegation would assist in establishing an administratively efficient process that deters the incumbent LECs from provisioning special access in a manner that is unjust and unreasonable or unlawfully discriminatory.

I. The FCC Should Permit Submission of Informational Comments

Under JCIG's proposed streamlined forfeiture process, incumbent LECs would be required to provide monthly performance reports.¹ These reports would indicate whether

¹ In addition to reporting separately for each special access customer, the incumbent LECs must also be required to provide aggregated reports for each of the following classes of customers: non-affiliated wireline carriers (*i.e.*, competitive LECs and interexchange carriers); affiliated wireline carriers; non-affiliated wireless carriers; affiliated wireless carriers; and incumbent LEC retail customers. *See, e.g.*, Joint Competitive Industry Group, *ILEC Special Access: The Critical Need for Performance Measurements, Standards, Reporting and Enforcement* at 6 (July 14, 2003), attached to Letter from Gil M. Strobel to Marlene H. Dortch, FCC, CC Docket No. 01-321 (July 15, 2003). These aggregated reports would be filed with the FCC and made publicly

any benchmark standards or parity standards have been violated. If one or more standards have been missed, the Enforcement Bureau, within seven days of receiving the incumbent LEC's report, would issue an NAL and an order to show cause. The NAL would identify each missed benchmark standard and each instance of unlawfully discriminatory treatment both by customer class and by circuit type.² The NAL also would propose a specific penalty for each violation.³ The order to show cause would direct the incumbent LEC to demonstrate: (i) why the Enforcement Bureau should not find that the incumbent has violated the FCC's rules and the Act; and (ii) why the incumbent should not be required to come into compliance with the FCC's performance requirements within thirty days. The order would provide the incumbent LEC with fifteen days to respond to the NAL,⁴ and would allow affected customers (*i.e.*, customers that purchased special access services directly from the incumbent LEC and whose service was affected by the performance that is the subject of the NAL) seven days to file an informational comment regarding the incumbent LEC's response.⁵ Within thirty days of the incumbent LEC's response to the NAL, if the incumbent LEC has not been able to provide adequate justification for its failure to meet the applicable standards,⁶ the Enforcement Bureau would issue a Forfeiture Order finding that the incumbent LEC has violated the FCC's rules and the Communications Act, and that it must pay the prescribed forfeiture described in the NAL to the U.S. Treasury.

available. The customer-specific reports would be provided only to the appropriate customers and would be treated as confidential data.

² Individual customers also would have the option of asking the Enforcement Bureau to issue an NAL and order to show cause if an incumbent LEC's customer-specific report revealed a violation of either a benchmark or parity standard.

³ For purposes of assessing penalties, violations would be defined on a per-circuit basis.

⁴ Under the rules "[t]he respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice)" to respond to an NAL. 47 C.F.R. § 1.80(f)(3). As the wording of the rule makes clear, the FCC has the discretion to define a "reasonable period of time" as it sees fit. In this case, 15 days is a reasonable amount of time for an incumbent LEC to respond to an NAL, particularly given that: (1) the NAL will be based on the incumbent LEC's own documentation; and (2) the JCIG measurements and standards already make ample allowances for reasonable excuses for poor performance. See Letter from JCIG to Marlene H. Dortch, FCC, CC Docket No. 01-321, at 13-17 (Sept. 26, 2002) ("JCIG Sept. 26 Letter").

⁵ Affected parties also would have the opportunity to comment on the accuracy of the incumbent LEC performance report that triggered the NAL.

⁶ As JCIG explained in a previous filing, JCIG's measurements and standards provide ample allowances for the vast majority of circumstances, other than *force majeure* events that could reasonably justify an incumbent LEC's failure to comply with a particular standard. It is therefore highly unlikely that an incumbent LEC will be able to justify its non-compliance by anything other than a *force majeure* event. See JCIG Sept. 26 Letter at 13-14.

Informational comments would assist the Enforcement Bureau in evaluating the accuracy of any facts asserted in the incumbent's NAL Response by allowing customers that have been directly affected by the incumbent's poor special access performance, and that have direct knowledge of an incumbent LEC's alleged violation(s), to provide relevant information that might otherwise be unavailable to the Bureau, particularly in instances where the incumbent LEC's defense is that it was not at fault for the poor performance.⁷ For instance, if an incumbent LEC claims that it missed a particular performance metric due to a customer-not-ready (CNR) event, a customer could provide the Enforcement Bureau with information showing that the incumbent LEC improperly characterized a particular order as a CNR situation even though the customer in fact was "ready."

Consistent with the FCC's rules, any informational comment filed with the Enforcement Bureau also would be served on the respondent incumbent LEC.⁸ To the extent necessary, JCIG requests that the FCC clarify or amend its NAL rules to ensure that customers directly affected by a Tier 1 incumbent LEC's unjust, unreasonable or unreasonably discriminatory special access performance have the right to file with the Enforcement Bureau an informational comment regarding the incumbent's response to an NAL concerning that performance. JCIG also requests that any such rule specify that an informational comment may be filed up to 22 days after the NAL is issued, regardless of whether the incumbent LEC takes the full 15 days to file its response to the NAL.

II. The FCC Should Adopt Procedures Regarding the Confidential Treatment of Relevant Information

To be effective, any streamlined forfeiture process ultimately adopted by the Commission must truly be *streamlined*: that is, it must swiftly address an incumbent LEC's unlawful behavior. At the same time, the process must be fair to both incumbent LECs and their special access customers. In particular, an incumbent LEC should be able to request confidential treatment for relevant portions of its monthly reports and its

⁷ States have recognized the importance of allowing parties to comment on incumbent LECs' attempts to excuse failures to meet specific performance standards. For example, the Performance Assurance Plans adopted in several states' section 271 proceedings allow competitive carriers an opportunity to comment on any claims that missed performance standards were caused by circumstances beyond the control of the incumbent LEC. See, e.g., *Petition Filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan*, New York Pub. Serv. Comm'n Case No. 99-C-0949, Performance Assurance Plan, Verizon New York Inc., at Sec. II.J., Exceptions and Waiver Process (2003).

⁸ Although the FCC's rules for restricted proceedings (including NAL proceedings) prohibit the submission of *ex parte* presentations, see 47 C.F.R. § 1.1208, a written presentation that is served on the parties to a restricted proceeding is not defined as an *ex parte* presentation, and therefore is permissible under FCC rules. See 47 C.F.R. § 1.1202(b)(1).

response to an NAL, in accord with the Commission's existing rules regarding confidentiality.⁹ Likewise, any special access customer should be able to request confidential treatment for relevant portions of its informational comment.

It is crucial, however, that requests for confidentiality not undermine the expeditious nature of the forfeiture process. When an incumbent LEC or special access customer seeks confidential treatment for a particular submission, the Enforcement Bureau should make a determination with respect to the request quickly. JCIG therefore proposes that any rule the FCC adopts to implement JCIG's proposed streamlined forfeiture process for special access specify a deadline by which the Enforcement Bureau must rule on a request for confidential treatment of a response to an NAL or an informational comment.

JCIG further proposes that, as part of this proceeding, the FCC adopt a generic protective order that would apply to any confidential or proprietary documents submitted pursuant to the streamlined forfeiture process. This protective order should be drafted in a manner that limits the possibility of disputes between the party seeking confidential treatment and the parties requesting access to the confidential document. In addition, the generic protective order should contain expedited procedures for obtaining access to confidential documents. For example, any person seeking access to confidential documents or information should file an executed Acknowledgement of Confidentiality with the Enforcement Bureau, and serve such Acknowledgement upon the counsel of the Submitting Party, within two business days prior to such person's reviewing or having access to such confidential documents or information. Likewise, any objection to the disclosure of confidential documents to a particular person should be filed with the Enforcement Bureau and served on that person's counsel within two business days after receipt of that person's Acknowledgement of Confidentiality. The protective order should also specify that any such objection to disclosure will be resolved by the Enforcement Bureau within two days of the objection being filed.¹⁰

Finally, JCIG proposes that whenever a party requests confidential treatment of documents submitted during the streamlined forfeiture process, the Enforcement Bureau will have an additional ten days to issue a Forfeiture Order (*i.e.*, within forty days after the incumbent LEC's response to the NAL).

⁹ See 47 C.F.R. §§ 0.457, 0.459. As noted above, JCIG anticipates that the customer-specific monthly reports would be treated as confidential. As a general rule, however, the monthly aggregate results should not be given confidential treatment.

¹⁰ As in the FCC's Section 271 proceedings, any party submitting confidential information pursuant to the protective order adopted in this proceeding should be required to designate a Washington, D.C. location at which requesting parties may review the confidential material. See, *e.g.*, *Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan*, Protective Order, 18 FCC Rcd 12215, ¶ 4 (Wireline Comp. Bur. 2003) (DA 03-2040).

III. The FCC Should Delegate Additional Forfeiture Authority to the Enforcement Bureau for Purposes of Enforcing the Special Access Standards

Section 0.311 of the FCC's rules delegates to the Enforcement Bureau the authority to assess forfeitures against common carriers, provided the amount is no more than \$100,000 per NAL or forfeiture order.¹¹ JCIG urges the Commission to amend this rule so as to provide a narrowly tailored exception for forfeitures assessed pursuant to the streamlined forfeiture process for violations of the special access performance standards adopted in this proceeding. In particular, the FCC should delegate to the Enforcement Bureau the FCC's full authority to issue NALs and forfeiture orders against Tier 1 incumbent LECs that have provisioned special access in a manner that is unjust and unreasonable or unlawfully discriminatory. Pursuant to this delegation, the Enforcement Bureau would be authorized to assess forfeitures of up to \$120,000 for each violation of the special access standards adopted in this proceeding, or each day of a continuing violation, with the amount assessed for any continuing violation not to exceed a total of \$1.2 million.

This amended delegation of authority would allow the Commission to maximize the deterrent effect of its special access rules without sacrificing administrative efficiency. If the FCC does not increase the Enforcement Bureau's delegated forfeiture-assessment authority for violations of the special access benchmark and parity standards, the Commission would have to issue all NALs and forfeiture orders involving amounts greater than \$100,000. JCIG anticipates that a significant percentage of special access NALs and forfeiture orders would exceed this amount, and therefore would require consideration by the full Commission.¹² The Enforcement Bureau could avoid this result only if it: (i) substantially reduced the forfeiture amount for each violation, so as to keep the total forfeiture amount at or below the \$100,000 maximum; or (ii) issued a separate NAL and forfeiture order for each violation associated with a particular monthly special access report, rather than addressing all monthly violations within a single NAL and forfeiture order. The first alternative would vitiate the deterrent effect of the rules. The second alternative would be administratively cumbersome (potentially requiring the Bureau to issue numerous NALs and forfeiture orders for a single incumbent LEC in a single month), and would undermine the streamlined nature of the process proposed by JCIG.

¹¹ 47 C.F.R. § 0.311(a)(4).

¹² As members of JCIG have previously explained, any penalties associated with special access performance metrics must be substantial enough to serve as an effective deterrent, and not be regarded by the incumbent LEC as merely a "cost of doing business." The forfeiture therefore must exceed the benefit the incumbent LEC could reasonably have expected to receive as a result of its unlawful behavior. *See, e.g.,* MCI Comments at 48-49 (filed as WorldCom); Focal Communications, *et al.* Comments at 21-22; AT&T Comments at 36-37 (all filed Jan. 22, 2002, in CC Docket No. 01-321).

Administrative efficiency would be served if the Enforcement Bureau, rather than the Commission, were able to handle the routine special access violations that are likely to arise under the streamlined forfeiture process. The routine nature of these enforcement actions, coupled with the standardized enforcement mechanism proposed by JCIG, makes these cases ideally suited for a streamlined forfeiture process that would be administered by the Enforcement Bureau rather than by the full Commission.¹³ In order to achieve an administratively efficient special access remedy that does not sacrifice deterrence, therefore, the Commission should delegate its full forfeiture-assessment authority to the Enforcement Bureau as part of this proceeding.

IV. Conclusion

For the foregoing reasons, JCIG urges the Commission to adopt JCIG's proposal for a streamlined forfeiture process for special access violations by Tier 1 incumbent LECs.

Respectfully submitted,

The Joint Competitive Industry Group

Robert W. Quinn, Jr.
Federal Government Affairs Vice
President
AT&T Corp.

Harold Salters
Director, Federal Regulatory Affairs
T-Mobile USA, Inc.

Douglas I. Brandon
Vice President – Legal and External
Affairs
AT&T Wireless Services, Inc.

Carol P. Pomponio
Director, Regulatory and External
Affairs
XO Communications, Inc.

Cathy L. Slesinger
Senior Vice President – Public Policy
Cable & Wireless

C. Douglas Jarrett
Keller and Heckman LLP
American Petroleum Institute

Richard J. Metzger
Senior Vice President and General
Counsel
Focal Communications

Jonathan Askin, General Counsel
**Association for Local
Telecommunications Services**

¹³ Although the decision to adopt the JCIG proposal is an important policy determination that clearly requires Commissioner-level action, the rules themselves include very specific parameters and afford the Enforcement Bureau very limited discretion in conducting enforcement proceedings pursuant to the rules.

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Paul Kouroupas
Vice President, Regulatory Affairs
Global Crossing Ltd.

Lisa B. Smith
Director, Federal Advocacy
MCI

Kent Nakamura
Vice President and Deputy General
Counsel
Nextel Communications, Inc.

H. Russell Frisby, Jr., President
**Competitive Telecommunications
Association**

Brian Moir
Moir & Hardman
**eCommerce & Telecommunications
Users Group (eTUG)**